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THE PENSION COMMISSION OF ONTARIO

BULLETIN

December 1993 - January, 1994

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The PCO Bulletin is published by the Pension Commission of Ontario, 101 Bloor Street West, 9th Floor, Toronto, Ontario M7A 2K2 (416) 314-0660 fax (416) 314-0650

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The Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 (as amended), the terms of the pension plan and the policy and practices of the PCO should be considered in determining specific legislative and other legal requirements and professional advice should be sought.

ISSN 1180-1565

Pension Plan Membership in Ontario

by Karen Maser, Chief - Pensions Section
Statistics Canada

At the beginning of 1992, over 47% of the paid workforce in Ontario belonged to registered (i.e. employer-sponsored) pension plans (RPPs). This is up from a 44.5% coverage rate two years earlier. (These rates are virtually identical to those for Canada.) The improvement in coverage is, however, due not so much to an increase in the number of members as to a drop in the number of men in the paid workforce.

This information comes from data recently released by the Pensions Section of Statistics Canada. Some of the highlights of the information available are presented here.

Ontario Plan Members

(Includes Ontario employees belonging to all RPPs, not just those registered with the PCO)

Membership

Ontario workers belonging to registered pension plans numbered 2,074,518 at the beginning of 1992, an increase

of 2% from 1990. At the same time, the number of paid workers in the province dropped by 4% to 4.4 million. It is because of this drop in the paid workforce that the coverage rate rose.

Ontario plan members accounted for close to 40% of the 5,318,090 pension plan participants in Canada in 1992. The 2% increase in the number of Ontario members compares to a growth of 4% for the country as a whole.

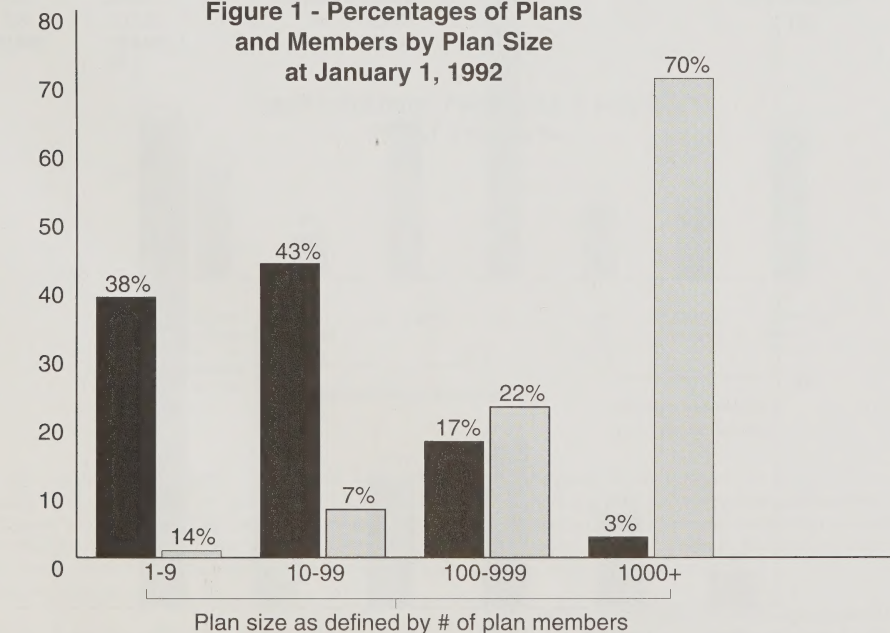
Of the 2,074,518 Ontario plan participants, 60% belonged to private sector plans; the remaining 40% worked in the public sector. In fact, 45% of Canada's private sector RPP members worked in Ontario relative to only 32% of all public sector participants.

Membership Change 1982 - 1992

The number of employees in RPPs in Ontario rose almost 16% from January 1 of 1982 to 1992. (For Canada, the increase was slightly lower, 14%.) Virtually the entire growth was due to the increase in the number of females participating in pension plans; their numbers rose 44% while the number of men participating was up only 2%. As a result, women now account for 40% of all Ontario members, up from 32% in 1982. (See Table 1 on the next page.)

Percentage

Figure 1 - Percentages of Plans and Members by Plan Size at January 1, 1992



Plans registered with PCO
Total plans = 9,239

Members of Ontario - registered pension plans
Total members = 1,950,438

Table 1 - Ontario employees participating in RPPs

Year	Total	Males	Females
1982	1,793,950	1,271,960	575,990
1984	1,786,755	1,189,864	596,891
1986	1,836,988	1,208,566	628,422
1988	1,915,125	1,241,644	673,481
1990	2,031,356	1,272,138	759,218
1992	2,074,518	1,244,856	829,662

Plan Size

Over 80% of the 9,239 plans had under 100 participants; these plans, however, covered just 8% of the members in all plans registered with the PCO. Although the larger plans (those with 1,000 members or more) accounted for less than 3% of all plans, 70% of the total number of plan members belonged to these plans. (See Figure 1 on page 3.)

Where Members of PCO Plans are Employed

As of January 1, 1992 plans registered with the PCO covered 1,950,438 members; 85% of these people were employed in Ontario, the rest in other parts of the country. (See Table 2 below.)

Plans Registered with the PCO

Number of Registered Plans

Over 50% of the 18,028 RPPs in Canada at January 1, 1992 were registered with the PCO. The number of Ontario plans was as high as 9,849 at the beginning of 1988 but dropped to 9,239 as of January 1, 1992. (More current data from the PCO indicate that there has been a significant decrease in plans since 1992, to 7,777 as of September 30, 1993. [There are two reasons for these differences in the number of plans. First, Statistics Canada considers a plan active until it has been terminated; whereas, Ontario considers a plan terminated once the PCO has been formally advised that a wind up is planned. Second, the two dates differ: January 1, 1992 vs. September 30, 1993.]).

Table 2 - Place of employment of members of PCO plans, January 1, 1992

Place of Employment	# Members	% of Total
Newfoundland	8,130	0.4
P.E.I.	1,221	0.1
Nova Scotia	16,595	0.9
New Brunswick	18,492	0.9
Quebec	108,158	5.5
Ontario	1,662,010	85.2
Manitoba	20,195	1.0
Saskatchewan	11,990	0.6
Alberta	46,937	2.4
British Columbia	44,548	2.3
Other	12,162	0.6
Total	1,950,438	100.00

Percentage of PCO - Registered Plans

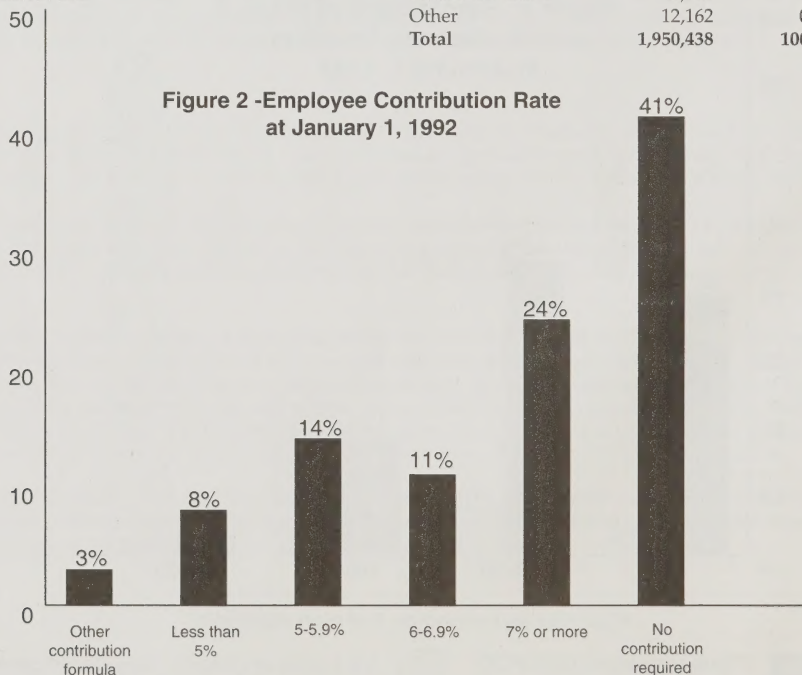


Figure 2 - Employee Contribution Rate at January 1, 1992

Percentage of Earnings Contributed

Type of Benefit Provided

Half of the plans registered with the PCO at the beginning of 1992 were defined benefit plans. They covered a very large majority of members (almost 90%). Defined contribution plans accounted for the other half of the plans but only 10% of the membership belonged to these plans.

From 1988 to 1992, the number of defined benefit plans registered with the PCO increased slightly from 4,522 to 4,599 while the number of defined contribution plans decreased from 5,189 to 4,507.

Employee Contribution Rate

Over 40% of the members of PCO registered plans belonged to non-contributory plans. Of those who were required to contribute, the largest proportion contributed at least 7% of their earnings. (See Figure 2 on page 4.)

Benefit Rate

Almost 45% of members will receive a benefit equivalent to 2% (or more in a few cases) of the amount they earned over a specified period of time. For further detail on benefit rate, consult Figure 3 below.

Additional information on registered pension plans, either for Ontario members or other members employed in Canada, is available from the Pensions Section of Statistics Canada. Contact either Johanne Pineau (613-951-4034) or Tom Dufour (613-951-2088).

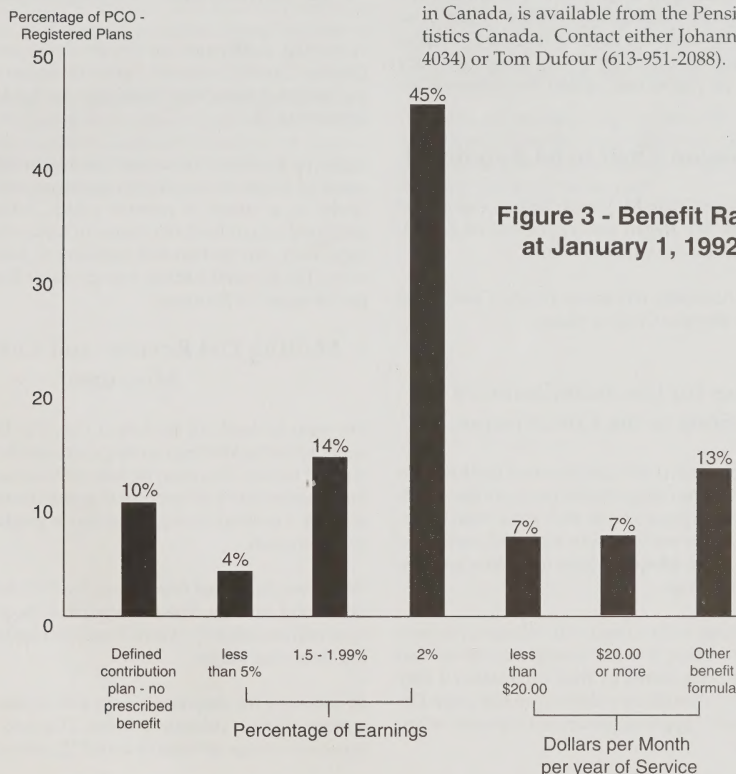


Figure 3 - Benefit Rate at January 1, 1992

A notice appeared in the October 13 edition of the *Statistics Canada Daily*, announcing the release of the "Pension Plans in Canada" data for 1/1/92. The release attracted media coverage which focused on the decline in the number of plans rather than on the number of members covered which, in our view, is a more meaningful measure.

We asked Karen Maser, Chief, Pensions Section at Stats Canada, to summarize the key data about Ontario plans and Ontario members and share the information with our readers. We thank Ms. Maser for her co-operation.

The Pensions Section is responsible for the collection and dissemination of statistics on employer pension plans in Canada. Information is available on the provisions and membership of these plans and on the financial holdings and investment profile of trusted pension funds.

Ms. Maser has been with Statistics Canada since 1977. She is a graduate of Queen's University and earned a M.S.W. from Carleton University. Her specialization was in administrative research methods and policy analysis.

Announcements

Actuarial Assumptions Guidelines - Solvency Valuations

In the first issue of the *PCO Bulletin* (February 1990) we published an article on actuarial assumptions that would be accepted by PCO staff (page 8).

For solvency valuations, there were two options for economic assumptions. The second option included an interest assumption for 20 years based on long-term provincial securities and an expense assumption of \$500 per member.

In recognition of changes in the financial markets and the solvency valuation requirements, the second option is no longer available. For valuation dates in or after December 1993, PCO staff will no longer be able to accept solvency valuations based on the second option for economic assumptions.

New Commission Chair to be Appointed

The term of office for Chair, M. Joseph Regan, expired on December 31, 1993. Mr. Regan was appointed on May 1, 1990. His successor has not yet been named.

Eileen E. Gillese, Vice-chair, will be the Acting Chair of the Commission until the new Chair is named.

Deadlines for the Submission of Applications to the Commission

Those making submissions for consideration by the Commission at its monthly meetings should be aware that deadlines for submitting applications to staff have been established. These deadlines are to ensure that staff and Commission members have adequate time to review applications prior to the meetings.

Although applications will be dealt with as quickly as possible by staff after receipt, it is not possible to ensure that applications will be considered by the Commission if they do not conform to the deadlines indicated on this page. Delays will likely result if applications are not complete when reviewed by staff.

Commission Meeting Dates

Thurs., April 28, 1994
Thurs., May 26, 1994
Thurs., June 23, 1994
Thurs., July 21, 1994
Thurs., Aug. 25, 1994
Thurs., Sept. 22, 1994
Thurs., Oct. 20, 1994
Thurs., Nov. 17, 1994
Thurs., Dec. 15, 1994

Submission Deadline

Wed., Jan. 26, 1994
Wed., Feb. 26, 1994
Wed., March 23, 1994
Wed., April 20, 1994
Wed., May 25, 1994
Wed., June 22, 1994
Wed., July 20, 1994
Wed., Aug. 24, 1994
Wed., Sept. 21, 1994

Future dates will be published in subsequent issues of the *PCO Bulletin*.

PCO Participates in Pension Conference

A one-day conference, on *Pension Policy and Regulation in Ontario: Current Issues and Future Directions* and organized by Lexium Educational Services, was held in Toronto on September 13.

Eighteen speakers from across Canada and drawn from the pension industry, regulatory agencies and government spoke on a variety of pension topics. Attendee feedback indicated a high level of interest in topics such as surplus, regulatory duplication and conflicts in federal-provincial rules. The keynote address was given by Ross Peebles, Superintendent of Pensions.

Mailing List Review and Cost Saving Measures

We want to thank all readers of the *PCO Bulletin* who responded to the Mailing List Review notice in the March and August issues. This exercise has enabled us to reduce our distribution list by 40 per cent to approximately 5,500 readers with a corresponding reduction in production and distribution costs.

We have reformatted this issue of the *PCO Bulletin* for additional cost savings. The actual size of the publication has been reduced slightly; it is still punched for filing in a standard three ring binder.

By reducing the page size we are able to take advantage of a more efficient printing process. This and other production cost savings amount to about 25 per cent.

Transfer of Commuted Value on Termination Outside Canada

The Pension Benefits Act provides three portability options to former pension plan members who terminate employment before the normal retirement age. The portability options set out in section 42 are: (a) transferring the commuted value of a pension benefit to another pension plan willing to accept the funds; (b) transferring the commuted value to a prescribed retirement savings arrangement, such as a locked-in RRSP or a Life Income Fund; or (c) purchase of a deferred life annuity. PCO staff have received several enquiries seeking clarification of the responsibilities of a pension plan administrator in instances where individuals seek to transfer the commuted value of their deferred pension to a pension fund or financial institution located outside of Canada.

A plan administrator must comply with a former member's direction as to the portability option selected within 30 days of receipt of the direction, subject to meeting the requirements of section 42 and the Regulation. Section 20(3) of the Regulation provides that an administrator shall not trans-

fer the commuted value of a pension or deferred pension unless the transferee has agreed to administer the amount transferred in accordance with the PBA and Regulation.

Furthermore, section 21(1) of the Regulation requires that in order for an RRSP to qualify as a prescribed retirement savings arrangement pursuant to section 42 of the PBA, it must be established in accordance with the Income Tax Act (Canada) (ITA). Section 21(2) (iii) of the Regulation states that if a deferred or immediate annuity is purchased, it must be provided by a person authorized under the laws of Canada to sell annuities as defined by the ITA under an insurance contract that meets the requirements of section 22 of the Regulation.

A financial institution or a pension fund based outside Canada is most unlikely to be able to meet these requirements, and therefore, a plan administrator could not be satisfied that the requirement of section 21(3) can be met.

It may be appropriate for plan administrators and consultants to obtain independent legal advice if they have any concerns as to whether statutory obligations under the PBA and Regulation are being met.

Administrative Practices



Pension
Commission
of Ontario

Commission des
régimes de retraite
de l'Ontario

SECTION:	Merger of Plans
INDEX NO.:	M200-151
TITLE:	Merger Policy, September 1993
APPROVED BY:	Pension Commission of Ontario
PUBLISHED:	Bulletin 4/2 (Dec 1993 - Jan 1994) page 8
PUBLISHED:	BBS - September 16, 1993
EFFECTIVE DATE:	September 16, 1993
REVISED DATE:	

The PCO takes the position that a merger of two or more pension plans ("predecessor plans") creates a "successor plan". Therefore, the transfer of assets from a predecessor plan into a successor merged plan requires the prior consent of the Superintendent of Pensions in accordance with subsection 81(4) of the Pension Benefits Act, R.S.O., 1990 (the "PBA").

In accordance with subsection 81(5) of the PBA, the Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the predecessor plans or that does not meet the prescribed requirements and qualifications.

This merger procedure establishes conditions under which the Superintendent would consider the members' and former members' benefits to be adequately protected as required by the PBA. The conditions apply with respect to asset transfers from plans registered in Ontario.

The conditions outlined in this procedure apply to each predecessor plan prior to the merger and the successor plan after the merger. The conditions should be interpreted in accordance with the terms of the PBA and the regulations under the PBA. An application which meets all of the conditions identified under the merger procedure will be processed in a summary manner. Other applications will be considered on a case-by-case basis. The merger procedure is set out in five parts as follows:

Part A General Filing/Reporting/Notice Requirements

Part B Conditions Applicable to All Pension Plans That Provide Defined Benefits

B.1 Requirement to Obtain a Court Order

B.2 Funding Requirements to be Met Under the Successor Merged Plan

Part C Conditions Applicable to the Merger of a Single-Employer Pension Plan that Provides Defined Benefits with a Multi-Employer Pension Plan

Part D Conditions Applicable to Defined Contribution Pension Plans

Part E Discretion of the Superintendent

A General Filing/Reporting/Notice Requirements

1.
 - (a) An amendment to the predecessor plans which creates the successor plan should be filed along with a fully restated plan text for the successor plan.
 - (b) The amendment to a predecessor plan which creates the successor plan must not be contrary to the amending provisions or any other relevant provisions of the documents of the predecessor plan or any documents related to the plan.
2. A letter of application for the Superintendent's consent to the asset transfer(s) with respect to the merger should be filed with all of the documents required to be filed or submitted in accordance with this policy. The letter should identify the predecessor plans affected by the merger proposal and also identify the value of the assets to be transferred from each predecessor plan at the proposed date of merger.
3.
 - (a) A report as at the proposed date of merger (a "merger report") should be prepared and filed for each of the predecessor plans which provide defined benefits. Each report should include a going concern valuation, a solvency valuation, and a wind up valuation. The amount of any going concern unfunded liability or solvency deficiency and the special payments required to liquidate the going concern unfunded liability or solvency deficiency should be identified.
 - (b) A merger report should also be prepared and filed for the successor plan. It should include a going concern valuation, a solvency valuation, and a wind up valuation. The report will be treated as a valuation report for an ongoing plan. Accordingly, the funding requirements for the normal cost and going concern unfunded liability and solvency deficiency should be identified.

Where the merger report on the successor plan indicates a going concern unfunded liability or a solvency deficiency or both, the total monthly rate of special payments should not be less than the total of the monthly special payments required to be made in respect of each of the predecessor plans as indicated in the merger reports under paragraph 3.a) above, with an appropriate adjustment to the amortization periods for such special payments so that their present value will equate to the going concern unfunded liability or solvency deficiency, as the case may be.

In determining the solvency deficiency, if any, of the successor plan, the portion of the "solvency asset adjustment" which consists of items (b), (c) and (d) in the definition in the Regulations should recognize only those special payments required to amortize any going concern unfunded liability in the successor plan.

- (c) In preparing the reports required under paragraphs 3. a) and b) above, the method of valuing the assets and liabilities with respect to each of the predecessor plans and the successor plan must be on a consistent basis.
 - (d) A merger valuation report prepared for a predecessor plan which provides defined contribution benefits should identify the assets and liabilities of the plan, determined as if the plan terminated at the date of merger.
4. With respect to each predecessor plan, individual written notice of the proposed merger should be transmitted to:
 - a) each member of the pension plan;
 - b) each former member and any other person who at the date of merger is entitled to receive a payment from the pension plan;
 - c) each trade union that represents members of the plan; and
 - d) any advisory committee established in respect to the plan.

When considered appropriate in the circumstances, the Superintendent may approve other forms of notice for those persons or bodies listed above.

A copy of the notice should be provided to the Superintendent, along with a certification of the date on which the last such notice was transmitted.

At a minimum, the information contained in the notice should include:

- i) the name of the predecessor plan;
- ii) the proposed date of the merger;
- iii) the name of the successor plan;
- iv) an explanation of the proposed merger and transfer of assets and information concerning how the merger would affect the benefits of members, former members and other persons entitled to receive payments from a predecessor plan including information related to how the benefits would be protected under the terms of the successor plan (where the transfer is to a multi-employer pension plan, notice that the benefits would no longer be covered by the Pension Benefits Guarantee Fund should be provided); and
- v) advice that comments may be submitted to the administrator and the Superintendent within a forty-five (45) day period following receipt of the notice.

B Conditions Applicable to all Pension Plans That Provide Defined Benefits

Pension benefits accrued to the date of merger and any ancillary benefits at the date of merger shall not be less under the provisions of the successor plan.

B.1 Requirement to Obtain a Court Order

Where the wind up valuation of a merger report for a predecessor plan discloses a surplus, a court order in relation to the predecessor plan should be obtained. The order should indicate that:

- a) the employer is entitled to apply an actuarial gain to reduce employer contributions for normal costs in accordance with subsection 7(3) of the Regulations under the PBA,
- b) the plan provides for payment of surplus to the employer on the wind up of the plan, and
- c) the plan permits merger.

Where any plan or plan-related documents have been or are to be amended in relation to surplus, this should be brought to the court's attention when the order is sought so that any issues concerning the legality of such amendment(s) can be considered simultaneously by the court.

Advance written notice of the court application made in order to satisfy the above conditions should be given to:

- i) the Superintendent, and
- ii) those persons and bodies entitled to notice of the proposed merger pursuant to section 4 of Part A above.

Where an employer is already in possession of a court order which satisfies the above conditions, disclosure of the declaration made by the court must be included in the notice under section 4 of Part A.

A copy of the court order should be included as part of the application.

B.2 Funding Requirements to be Met Under the Successor Plan

Funded Ratio Requirement

On the completion of the transfer of assets from the predecessor plans, the funded ratio in the successor plan must not be less than the funded ratio of the highest funded ratio of the predecessor plans, but need not exceed 1.0.

For the purposes of B.2, the funded ratios should be determined from the wind up valuations in the merger reports.

C Conditions Applicable to the Merger of a Single-employer Pension Plan that provides Defined Benefits with a Multi-employer Pension Plan that Provides Defined Benefits

Where assets are to be transferred from a plan which is a **single-employer pension plan that provides defined benefits** to a successor plan which is a **multi-employer pension plan that provides defined benefits and that is established pursuant to a collective agreement or a trust agreement**, the following conditions apply:

- i) the requirements of B.1 apply to each single-employer pension plan,
- ii) the requirements of Part A shall apply to each single-employer pension plan;
- iii) with respect to the multi-employer pension plan, paragraph 3. b) of Part A shall not apply and, instead of the restated plan text required under paragraph 1. a) of Part A), an appropriate amendment to the plan should be filed; and
- iv) where the bargaining agent(s) for a predecessor plan does not represent all of the members and former members of the plan, the Superintendent may consider that the pension benefits and other benefits of the members and former members who are not represented by a trade union are protected where annuity purchases are made or where the multi-employer pension plan contains a provision which requires that the pension benefits and other benefits to which those unrepresented persons are entitled at the date of merger under the predecessor plan will be fully funded in the multi-employer pension plan while the plan continues and on plan termination.

D Conditions Applicable to Defined Contribution Pension Plans

- 1. Where surplus exists at the proposed date of merger in a predecessor plan which is a defined contribution plan, B.1 applies to the application for consent to the transfer of assets with respect to that particular predecessor plan.
- 2. Where paragraph 1 above does not apply, only the conditions under Part A should be satisfied.

E Discretion of the Superintendent of Pensions

Notwithstanding the foregoing requirements, the Superintendent may consent to a transfer of assets relating to a merger of pension plans where the Superintendent is satisfied that the pension benefits and other benefits of the members and former members of the predecessor plan are protected in the circumstances.



SECTION:	Class of Employee
INDEX NO.:	C100-100
TITLE:	Clarification (formerly Interpretation Bulletin I), PBA s. 31 - 34
APPROVED BY:	Superintendent of Pensions
PUBLISHED:	Bulletin 4/2 (Dec 1993 - Jan 1994), page 12
PUBLISHED:	BBS - September, 1993
EFFECTIVE DATE:	March 1, 1988
REVISED DATE:	December 3, 1993

Several issues have been raised by plan administrators concerning the operation and effect of this part of the Act. This administrative practice will clarify:

- 1) the meaning of “class of employee” within sections 31 and 33 including “nature of employment” and “terms of employment”; and
- 2) the meaning of “pension benefits and other benefits reasonably equivalent to those provided under the pension plan maintained ... for employees of the same class” in section 34.

Class of Employees

In determining what constitutes a “class of employees”, the Superintendent will be guided by subsection 33(2) of the Act and therefore examine both the issues of the “nature” and the “terms” of employment. Whether or not a separate class of employees exists will depend upon the specific employment circumstances of each situation.

One goal of pension reform embodied in the *Pension Benefits Act* is the extension of pension benefits without restriction due only to part-time status.

While historically pension plans have treated those types of employees listed below as separate classes, the Superintendent may, nevertheless, determine a class of employee based on the specific employment circumstances of a particular situation:

- a) employees paid on a salaried basis;
- b) employees paid on an hourly basis;
- c) employees who are members of a trade union;
- d) employees who are not members of a trade union;
- e) supervisory employees;
- f) management employees;
- g) executive employees;
- h) corporate officers;
- i) employees who are also significant shareholders of the employer; and
- j) such identifiable groups as are acceptable to the Superintendent.

Equivalent Benefits

For a pension plan established for part-time employees to be found to provide “reasonably equivalent benefits” to the sister plan for full-time employees of the same class, all benefits must be reasonably equivalent. All ancillary benefits, improvements and employee costs must thus be similar.

It is not possible to establish a defined contribution plan which successfully mirrors a defined benefit plan. A mere duplication of contributions is not, due to the vagaries of investment returns and apportionment of risk between the sponsor and members, sufficient to satisfy the criteria of reasonable equivalence.



SECTION:	Gradual and Uniform
INDEX NO.:	G100-100
TITLE:	Age-Related Benefit Formulae, PBA, ss. 11(1) & (4)
APPROVED BY:	Pension Commission of Ontario
PUBLISHED:	Bulletin 4/2 (Dec 1993 - Jan 1994), page 14
PUBLISHED:	BBS - September, 1993
EFFECTIVE DATE:	December 19, 1991
REVISED DATE:	December 3, 1993

The PCO considers that benefit formulae, whether in defined benefit or defined contribution plans, that are based exclusively on the age of plan members do not satisfy the requirement in subsection 11(1) of the PBA that benefit accrual be uniform. Nevertheless, the legislation gives the Superintendent discretion in subsection 11(4) to register a plan with a benefit formula which is not uniform, if the Superintendent is of the opinion that registration is justified in the circumstances of the pension plan and the members.

In exercising that discretion, the Superintendent will be guided by such factors as:

- a) whether the formula is fair, in the sense that it provide "value for money" for plan members;
- b) whether it is reasonable in the circumstances of the particular industry;
- c) whether full disclosure has been provided;
- d) whether there is substantial membership agreement with the formula by the affected plan members (and former members, if appropriate);
- e) whether the formula is prospective;
- f) other factors as seem appropriate in the circumstances.

Defined Benefit Plans

A descending age-related benefit formula in a defined benefit plan usually may be registered through the exercise of the Superintendent's discretion under subsection 11(4), as a reasonable exception to the basic requirement that benefits accrue in a uniform manner.

An ascending, or "back-loaded", age-related benefit formula usually will not be accepted for registration as reasonable exception under subsection 11(4).

Defined Contribution Plans

Usually, a defined contribution plan which has a benefit formula based on age may be registered if:

- a) the contributions made on behalf of an employee by the employer vary to provide increased accrual to employees who are older, or have greater age and service, or
- b) contributions increase according to age, or age and service.



SECTION:	Notice Requirements
INDEX NO.:	N300-100
TITLE:	Guideline - Notice of Wind Up of a Pension Plan (formerly Policy Statement I: Notice Requirements), PBA, ss. 68(2)
APPROVED BY:	Pension Commission of Ontario
PUBLISHED:	Bulletin 4/2 (Dec 1993 - Jan 1994), page 15
PUBLISHED:	BBS - September, 1993
EFFECTIVE DATE:	March 1, 1988
REVISED DATE:	December 3, 1993

I Written Notice of Proposal to Wind Up the Pension Plan

The administrator of a pension plan shall give written notice of a proposal to wind up the pension plan to:

1. the Superintendent;
2. each member of the pension plan;
3. each former member of the pension plan who
 - a) is entitled to a deferred pension payable from the pension fund;
 - b) is in receipt of a pension payable from the pension fund;
 - c) is entitled to commence receiving payments of pension benefits from the pension fund within one year after termination of employment or membership, or
 - d) is entitled to a refund of contributions, including additional voluntary contributions, from the pension fund;
4. each trade union that represents members of the pension plan;
5. the advisory committee of the pension plan, and
6. any other person entitled to a payment or deferred payment from the pension fund, including:
 - a) a former spouse of a member or former member who is entitled to a portion of the pension benefit accrued by the member or former member pursuant to a domestic contract or court order;
 - b) a widow or widower of a deceased former member who is entitled to survivor benefits which are to be paid from the pension fund;
 - c) any designated beneficiary named by a deceased former member entitled to payment from the pension fund;
 - d) any personal representative of a member or former member entitled to payment from the pension fund, and
 - e) any dependent children of a deceased former member entitled to payment from the pension fund.

II Where Written Notice is Impractical

Where individual notice is impractical, a plan sponsor may apply to the Superintendent for permission to provide notice by means of advertisement in a newspaper or newspapers in the area or areas of employment or former employment. Prior to the granting of such permission the Superintendent will require:

- i) the reasons why individual notice is impractical;
- ii) the proposed wording of such a notice, and
- iii) details as to the intended circulation of such a notice.

III Important Notes

The former "Policy Statement I: Notice Requirements" is now repealed. This policy replaces Part A of former Policy Statement I, regarding notice of wind up of a pension plan.

Part B of former Policy Statement I, regarding notice of partial wind up of a pension plan, was superseded by the Administrative Practice W100.301, Written Notice of Proposal for Partial Wind Up of a Pension Plan, published in the August 1993 Bulletin, Volume 4, Issue 1, page 23.

Part C of former Policy Statement I, regarding notice of a surplus withdrawal application, was superseded by Administrative Practice S900.500, published in the October 1992 Bulletin, Volume 3, Issue 2, page 8.

Part D of former Policy Statement I, regarding restrictions on surplus withdrawal on plan wind up, was also superseded by Administrative Practice S900.500, published in the October 1992 Bulletin, Volume 3, Issue 2, page 8.

How To Change Province Of Registration

It is a requirement of Ontario's *Pension Benefits Act* that any pension plan that has members employed in Ontario must be registered with the PCO. However, because of the existence of a Memorandum of Reciprocal Agreement among Ontario and other Canadian pension regulators, pension plans are required only to register in the jurisdiction in which the plurality of members is employed.

In a multi-jurisdictional pension plan membership numbers can shift from jurisdiction to jurisdiction over time. Such a shift may affect the plurality of plan members. If this occurs, the registration of the plan may be transferred from the original jurisdiction to the one having the plurality. However, change of registration is not usually necessary if the shift in membership is temporary. If the change results from a plant closure, the movement or hiring of a large group of employees, or the purchase of a new division a transfer of registration would normally occur.

Some plan administrators have asked what steps, if any, they should take when they become aware of a change in plurality of membership such that the jurisdiction of registration might be affected. (The Annual Information Return will reveal such a change in the plurality of membership.)

The Administrator or agent should first advise the PCO's Pension Officer or Analyst who is responsible for their plan. Once it has been confirmed that a change in jurisdiction of registration is required, PCO staff must bring the pension plan file up-to-date and ensure that plan beneficiaries and their representatives receive notice of the pending change.

Notice

PCO staff will require that the Administrator advise all members, former members, and any other persons entitled to benefits under the pension plan, and any collective bargaining agents representing members of the plan, of the request for a change of jurisdiction of registration. Confirmation that notice has been distributed, and the date of distribution will be required. The PCO requires a 45 day waiting period after notice is delivered before proceeding with the transfer.

Outstanding Transactions

PCO staff must ensure that all outstanding transactions relating to the plan are resolved before transferring registration to another jurisdiction. This may mean that the Administrator will be required to provide any missing AIRs, amendments or other plan documents, or any required financial statements. PCO staff will also require that Pension Benefit Guarantee Fund filings and assessments are up-to-date, and that any other outstanding applications or other matters are completed.

After the above steps have been taken the transfer will be arranged between the respective regulators.

Life Income Fund - Minimum and Maximum Withdrawals

The Ontario LIF is a tax-deferred retirement savings arrangement which is acceptable for registration under the Income Tax Act (Canada), (the "ITA") as a Registered Retirement Income Fund (a "RRIF"). However, no locked-in monies may be transferred to a RRIF for which the specimen document submitted for the approval of the Minister of National Revenue does not also comply with the LIF requirements identified in Schedule 1 of Regulation 909 under the PBA.

The documents for an Ontario LIF must provide information pertaining to spousal protection, disclosure, acceptable transfers and minimum and maximum withdrawal formulae. The specimen document submitted for the approval of the Minister of National Revenue must not permit withdrawals which contravene the following requirements which are applicable to minimum and maximum withdrawals:

1. No withdrawals are permitted before age 55. (Please note that the maximum withdrawal table shows a maximum withdrawal for an individual turning age 55 during the year so that the maximum withdrawal after the individual has turned 55 can be determined.)
2. In the initial fiscal year of a LIF, the maximum withdrawal amount is prorated based on the number of months in that fiscal year divided by 12, with partial months counting as one month.
3. Withdrawals can be made in the first fiscal year of the LIF provided the individual is 55 years old.
4. The maximum withdrawal in a fiscal year is zero if any part of the assets used to purchase the LIF was transferred from another LIF during the year.
5. Withdrawals from a LIF must begin no later than the end of the second fiscal year of the LIF.
6. No annual withdrawals are permitted after December 31 of the year the LIF holder attains 80 years of age. (The balance of the LIF must be transferred to purchase an annuity which complies with the requirements of the Act and the regulations.)

Minimum Withdrawals

A table that identifies the minimum percentage of a LIF balance which must be withdrawn on an annual basis, beginning no later than the second year of the LIF, is shown on the next page. The minimum withdrawal percentages shown are a result of calculations made in accordance with the requirements under the ITA for minimum annual withdrawals from a RRIF. (Please refer to the penultimate paragraph under this section for clarification of an exception which exists due to the wording of Schedule 1 of Regulation 909.)

The table opposite indicates the minimum withdrawal as a percentage of the LIF balance at the beginning of a fiscal year. The Regulation states that the balance in the LIF at the beginning of a year must be divided by an applicable factor. The table shows the reciprocal of such factors (1 / factor) and expresses them as a percentage in order that the annual minimum withdrawal amounts may easily be determined.

Percentages shown in the table are multiplied by the LIF balance at the beginning of the year to derive the dollar amount of minimum withdrawal during the year. Since the minimum formula established under the ITA is applicable to minimum withdrawal requirements for persons age 55 to age 80 (the lifetime of an Ontario LIF), the minimum withdrawal percentages shown below will not change unless the minimum withdrawal formula under the ITA is amended.

An article on the Life Income Fund published in the August, 1993 *PCO Bulletin* indicated that minimum and maximum tables for withdrawals from an Ontario LIF would be published annually. However, because the minimum does not change except as a result of ITA (Canada) amendments, the PCO will **not** publish a minimum withdrawal table on an annual basis.

Please note that there was an error in the minimum withdrawal table published in the December 1992 PCO Bulletin. That table showed a minimum withdrawal of 8.53% for a person age 80 where the LIF purchase would be subject to Revenue Canada's rules for "new" RRIFs. The correct figure should have been 9.09% (Accordingly 9.09% is applicable to both the old and the new columns. The 8.53% figure is the Income Tax Act minimum withdrawal for a RRIF. However, the minimum withdrawal from a LIF is 9.09% in accordance with the wording of Regulation 909 under the Act. The Government is aware of this difference and an amendment to the Regulation to the PBA is being considered.

In using the table it should be noted that in the initial fiscal year of a LIF the minimum withdrawal is zero. The percentages reflect calculations made in accordance with the ITA's requirements for RRIFs established under the "old" pre-1993 rules and for RRIFs established under the "new" post-1992 rules.

Table 1
Minimum Withdrawal Percentages

Age at Start of Year	New Age During Year	Years to End of Year Turn 90	Minimum Withdrawal as a Percentage of the LIF Balance at the Start of Year (Old) (New)	
54	55	36	0.00%	(same as "old"
55	56	35	2.86%	to age 70)
56	57	34	2.94%	
57	58	33	3.03%	
58	59	32	3.13%	
59	60	31	3.23%	
60	61	30	3.33%	
61	62	29	3.45%	
62	63	28	3.57%	
63	64	27	3.70%	
64	65	26	3.85%	
65	66	25	4.00%	
66	67	24	4.17%	
67	68	23	4.35%	
68	69	22	4.55%	
69	70	21	4.76%	
70	71	20	5.00%	
71	72	19	5.26%	7.38%
72	73	18	5.56%	7.48%
73	74	17	5.88%	7.59%
74	75	16	6.25%	7.71%
75	76	15	6.67%	7.85%
76	77	14	7.14%	7.99%
77	78	13	7.69%	8.15%
78	79	12	8.33%	8.33%
79	80	11	9.09%	9.09%

Note: Individuals who purchased the LIF before 1993 may use either the old or the new percentages, between the ages of 71 and 77. At age 78, the "new" percentage must be used.

Maximum Withdrawals

The provisions identified in Schedule 1 of Regulation 909 restrict the amounts which may be withdrawn annually. In accordance with subsection 5(3) of Schedule 1, one of the two prescribed methods of calculating the maximum withdrawal must be applied for all years of the LIF. The two methods permitted under Schedule 1 are:

- 1) calculation of an interest rate not to exceed six per cent per annum for all years; or,

- 2) calculation of an interest rate that is not higher than the prescribed rate (the rate published in the Bank of Canada Review under CANSIM B-14013 for the December preceding the 1st day of January in the year a calculation is made) for the first fifteen years and a rate that does not exceed six per cent for the remaining years.

The formulae for determining maximum annual withdrawal amounts using the CANSIM method is shown below. A table which identifies the maximum percentage of a LIF balance which may be withdrawn in 1993 using the maximum interest assumptions permitted under the CANSIM method is also included.

Please note that the presentation of the maximum table is identical to that for the minimum table. Maximum withdrawals are shown as a percentage of the LIF balance at the beginning of the year.

The following explanations may be of assistance in using the maximum withdrawal table.

1. The applicable maximum withdrawal percentage in the table is applied to the LIF balance at the start of the year to determine the maximum dollar amount of withdrawal in the year.

To illustrate, for an individual who turns age 60 during 1994 (attained age is 59) and whose LIF has a balance of \$100,000 at January 1, 1994, the maximum withdrawal during 1994 would be:

$$\$100,000 \times 7.40699\% = \$7,406.99$$

2. The maximum withdrawal in a year is based on the number of years from January 1st of the year to December 31st of the year the individual turns age 90. Thus the "age at start of year" is the age just before January 1st, and the "new age" is the age the member will attain during the year including January 1st birthdays.
3. The table does **not** represent withdrawal maxima for years other than 1994. The maximum withdrawal will change every year regardless of when the LIF was purchased. The maximum withdrawal table for 1995 will be published as soon as it is available in 1995.

Table 2
Maximum Withdrawal Percentages

Age at Start of Year	New Age During Year	Years to End of Year Turn 90	1994 Maximum Withdrawal as a Percentage of the LIF Balance at the Start of Year
54	55	36	7.07854%*
55	56	35	7.13467%
56	57	34	7.19514%
57	58	33	7.26037%
58	59	32	7.33081%
59	60	31	7.40699%
60	61	30	7.48949%
61	62	29	7.57897%
62	63	28	7.67618%
63	64	27	7.78199%
64	65	26	7.89737%
65	66	25	8.02348%
66	67	24	8.16162%
67	68	23	8.31334%
68	69	22	8.48045%
69	70	21	8.66507%
70	71	20	8.86976%
71	72	19	9.09757%
72	73	18	9.35217%
73	74	17	9.63808%
74	75	16	9.96087%
75	76	15	10.32751%
76	77	14	10.75142%
77	78	13	11.24589%
78	79	12	11.82864%
79	80	11	12.52382%

*prorated over the number of months the planholder was age 55.

Note: The above table is based on the maximum interest assumptions permitted using the CANSIM method. The CANSIM interest rate (December 1993) of 7.12% is applicable for the first 15 years following January 1, 1994, and 6% thereafter. The maximum withdrawal table for 1995 will be published as soon as it is available in 1995.

Ontario Life Income Fund - Maximum Annual Withdrawal Formulae Using the CANSIM Method

Description of Mathematical Formulae Required to Establish the Annual Maximum Withdrawal Amount Using the CANSIM Method

- C Represents the fund balance at the starting date of the fiscal year;
- H Represents the number of years between 1 January of the year in which the calculation is made and 31 December of the year during which the pensioner reaches age 90;
- i_1 Represents the applicable interest rate for the first 15 years. This rate may not exceed that obtained for long-term bonds issued by the Government of Canada for the month of December preceeding the year of valuation (B-14013).
- i_2 Represents the applicable interest rate for the period after the first 15 years. This rate may not exceed 6%.
- $V_1 = 1/(1+i_1)$
- $V_2 = 1/(1+i_2)$
- N Represents the number of months in the initial fiscal year of the fund, with every portion of an incomplete month counting as one month.
- M Represents the maximum withdrawal authorized during a fiscal year. The limit "M" is established as follows:

$$M = C/F * N/12$$

- F Represents the value, at the starting date of the fiscal year, of a pension of which the annual payment is \$1 payable at the beginning of each year between that date and the 31 December of the year during which the pensioner reaches age 90. Calculation for the value "F" is made using the following formulas:

1. When H is equal to or less than 15 years and the calculation is made on 1 January:

$$F = (1 - V_1^H) / (i_1 * V_1)$$

2. When H is equal to or less than 15 years and the calculation is made on a date which is not 1 January:

$$F = 1 + V_1^{1/365} * (1 - V_1^{(H-1)}) / (i_1 * V_1),$$

where "J" is the number of days between the first day of the month in which the calculation is made and the end of the fiscal year of the LIF.

3. When H is greater than 15 years and the calculation is made on 1 January:

$$F = (1 - V_1^{15}) / (i_1 * V_1) + V_1^{15} * ((1 - V_2^{(H-15)}) / (i_2 * V_2))$$

4. When H is greater than 15 years and the calculation is made on a date which is not 1 January:

$$F = 1 + V_1^{1/365} * (1 - V_1^{14}) / (i_1 * V_1) + V_1^{(14+J/365)} * ((1 - V_2^{(H-15)}) / (i_2 * V_2))$$

where "J" is the number of days between the first day of the month in which the calculation is made and the end of the fiscal year of the LIF.

Regulations

Amendments to Regulation 909/90 to the Pension Benefits Act filed on December 2, 1993:
O. Reg. 785/93, 786/93 and 787/93 to Ontario Regulation 909/90

Re: Extension of Exemptions from Filing Compliance Amendments

The amendment extends the existing exemptions under subsections 47(4) and 47(5) of Regulation 909 from the requirement to file amendments which comply with the Act and the regulations to December 31, 1994. The exemptions are applicable only to pension plans which provide defined benefits and have been extended from December 31, 1993.

Administrators of pension plans which provide defined benefits are required to file amendments that comply with the requirements of the Income Tax Act (Canada), (the "ITA") by December 31, 1993. There are a number of unresolved conflicts (tax harmonization issues) between the requirements of the ITA and the Act and regulations. Many plan Administrators may be unable to simultaneously file amendments which comply with the requirements of both statutes. This further extension of the compliance filing deadline eases the compliance dilemma faced by plan Administrators and gives the Ontario Government more time to resolve the tax harmonization issues.

On December 2, 1993 O. Reg. 785/93 was filed amending Regulation 909/90. It was published in the Ontario Gazette, December 18, 1993 issue:

REGULATION TO AMEND REGULATION 909 OF REVISED REGULATIONS OF ONTARIO, 1990 MADE UNDER THE PENSION BENEFITS ACT

Note: Since January 1, 1993, Regulation 909 has been amended by Ontario Regulation 433/93. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1992.

- 1. Subsections 47(4) and (5) of Regulation 909 of the Revised Regulations of Ontario, 1990 are revoked and the following substituted:**
 - (4) Every employer who, on January 1, 1988, maintained a pension plan that provides defined benefits is exempt from subsection 19(1) of the Pension Benefits Act, 1987 for the period ending December 31, 1994.
 - (5) The parties to a collective agreement or arbitration award governing a pension plan described in subsection 19(2) of the Pension Benefits Act, 1987 that provides defined benefits are exempt from that subsection for the period ending December 31, 1994.
- 2. This Regulation comes into force on January 1, 1994.**

* * *

Re: Declaration of Compliance with the Act and the Regulations

When this amendment takes effect on May 1, 1994, Form 1 under Regulation 909 (Application for Registration of a Pension Plan) will be amended to require that the Administrator complete a declaration of compliance with the Act and the regulations. The amendment also establishes Form 1.1 (Application for Registration of a Pension Plan Amendment) as a prescribed form under Regulation 909. The completion of a declaration of compliance is also a requirement under Form 1.1.

Administrators of pension plans must administer the plans and the plan funds in accordance with the Act and the regulations. Making the completion of a declaration of compliance a prescribed requirement under Form 1 and Form 1.1 ensures that each Administrator acknowledges his or her responsibility for compliance in writing.

Applications for the registration of plan documents received by the PCO on and after May 1, must be made on amended Form 1 or Form 1.1, as applicable. Form 1 as it existed prior to the effective date of the amendment must be used for all applications for the registration of a pension plan received by the PCO prior to May 1, 1994. Applications made under Form 1 should be submitted with a completed Pension Plan Document Checklist.

Applications for the registration of plan amendments which are received by the PCO prior to May 1, 1994 may be filed using either Form 1.1 or the Pension Plan Document Checklist.

A *Compliance Assistance Guideline* which will assist plan Administrators in the completion of prescribed forms including a requirement for a declaration of compliance with the Act and the Regulation will be available prior to May 1, 1994.

On December 2, 1993 O. Reg. 786/93 was filed amending Regulation 909/90. It was published in the Ontario Gazette, December 18, 1993 issue:

**REGULATION TO AMEND
REGULATION 909 OF REVISED REGULATIONS OF ONTARIO, 1990
MADE UNDER THE
PENSIONS BENEFITS ACT**

Note: Since January 1, 1993, Regulation 909 has been amended by Ontario Regulation 433/93. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1992.

1. **Section 83 of Regulation 909 of the Revised Regulations of Ontario, 1990 is amended by adding the following subsection:**

(1.1) An application for registration of an amendment to a pension plan shall be in Form 1.1.

2. **Form 1 to the Regulation is revoked and the following substituted:**

Form 1

Pension Benefits Act

Application for Registration of a Pension Plan

(Form 1 and Form 1.1 are not reproduced here. They will form part of the above-mentioned Compliance Assistance Guideline to be published in the spring of 1994.)

3. **The Regulation is amended by adding the following form:**

Form 1.1

Pension Benefits Act

Application for Registration of a Pension Plan Amendment

4. **This Regulation comes into force on May 1, 1994.**

* * *

Re: Calculation of Transfer Values for Pensions and Designation of New Brunswick and British Columbia

When a pension plan member exercises his or her right to transfer the commuted value of that member's pension out of the plan into a locked-in vehicle, section 19 of Regulation 909/90 formerly required that the commuted value shall not be less than the value determined using 1988 Canadian Institute of Actuaries (CIA) recommendations for computing transfer value. In 1993, the CIA replaced its 1988 recommendations with new recommendations for calculating transfer values.

This amendment to section 19 of Regulation 909/90 replaces the 1988 CIA recommendations in the Regulations with the new 1993 CIA recommendations for calculating transfer values. The change is effective January 1, 1994.

The same amendment to the Regulation designates New Brunswick and British Columbia as provinces to which the Pension Commission of Ontario may delegate its functions and powers, and from which it may accept similar delegations.

The Pension Commission has the authority to delegate supervisory authority to, and to receive a similar delegation from, provinces or territories designated in subsection 23(1) of Regulation 909/90 as having in force legislation substantially similar to the Act. Currently, Alberta, Manitoba, Newfoundland, Nova Scotia, Quebec, Saskatchewan, the Northwest Territories, and the Yukon Territory are so designated. The six provinces are signatories, with Ontario, to the Memorandum of Reciprocal Agreement among pension regulators.

Both New Brunswick and British Columbia enacted modern pension legislation recently. New Brunswick is also a recent signatory of the Memorandum of Reciprocal Agreement among pension regulators, and British Columbia has indicated its intention to sign the agreement as soon as possible.

This amendment adds The Province of New Brunswick and The Province of British Columbia to the list of designated jurisdictions in subsection 23(1) of Regulation 909/90. The change is effective January 1, 1994.

On December 2, 1993 O. Reg. 787/93 was filed amending Regulation 909/90. It was published in the Ontario Gazette, December 18, 1993 issue:

**REGULATION TO AMEND
REGULATION 909 OF THE REVISED REGULATIONS OF ONTARIO, 1990
MADE UNDER THE
PENSION BENEFITS ACT**

Note: Since January 1, 1993, Regulation 909 has been amended by Ontario Regulation 433/93. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1992.

- 1.-(1) Subsection 19(1) of Regulation 909 of the Revised Regulations of Ontario, 1990 is revoked and the following substituted:**
- (1) For the purposes of subsection 42(1) of the Act, the commuted value of a pension, deferred pension or ancillary benefit shall not be less than the value determined in accordance with “Recommendations for the Computation of Transfer Values from Registered Pension Plans” issued by the Canadian Institute of Actuaries and effective September 1, 1993.
 - (2) Subsection 19(5.1) of the Regulation is amended by striking out “minimum” in the third line.
- 2. Subsection 23(1) of the Regulation is amended by adding the following paragraphs:**
- 9. The Province of New Brunswick.
 - 10. The Province of British Columbia.
- 3. This Regulation comes into force on January 1, 1994.**

Updated CIA Transfer Value Recommendations

Note: Readers should refer to "Regulations" for O. Reg. 787/93 which amends Regulation 909 and which replaces the 1988 CIA Recommendations for computing transfer values with the 1993 CIA Recommendations.

The Canadian Institute of Actuaries recently adopted updated Recommendations for the Computation of Transfer Values from Registered Pension Plans. The new Recommendations were effective on September 1, 1993. The 1993 CIA Recommendations replace the previous Recommendations which were effective on November 14, 1988. The CIA has also provided actuaries with guidance on acceptable transitional practices with respect to commuted values based on unisex actuarial tables.

The amendment to the Regulation takes effect on January 1, 1994. *In the interim, the CIA Recommendations (effective on September 1, 1993) - and binding on actuaries - are inconsistent with the requirements of the PBA.* This article explains how commuted values are to be computed for the period between September 1, 1993 and December 31, 1993.

Commuted Values that do not Vary by Sex

Section 52 of the PBA does not allow the sex of the member to be taken into account in determining the amount or the commuted value of certain benefits. The commuted value of such benefits must be determined on a "unisex" basis. Commuted values of benefits in respect of employment after December 31, 1986 cannot vary by the sex of the member. In certain circumstances the commuted values of benefits in respect of service prior to January 1, 1987 likewise cannot vary by the sex of the member.

The 1993 CIA Recommendations specify the required treatment of benefits which can and cannot vary by the sex of the member. According to the CIA, where unisex commuted values are required, blended mortality rates must be used in determining commuted values. The blended mortality approach should be adopted only when unisex commuted values are required by either:

- the applicable legislation; or
- the provisions of the plan; or
- the plan administrator, if the administrator is so empowered by the provisions of the plan.

Until the adoption of the 1993 Recommendations, it was a common practice to determine the commuted value of benefits for all years of service on a unisex basis. Such a practice was acceptable to the PCO. Now this practice may be restricted in many circumstances.

Application of the new CIA Recommendations

The application of the new CIA Recommendations will have a different effect depending on whether the commuted value is calculated for the termination of membership of an individual or for a full or partial plan wind up.

Commuted Values on Individual Termination of Membership

On the termination of an individual member, the administrator of the plan must comply with the Regulation. Accordingly, the administrator must determine commuted values using the 1988 CIA Recommendations for terminations that occur before January 1, 1994 even if the calculation is done after January 1, 1994. The commuted value may be based on unisex mortality tables for all benefits.

However, actuaries are required to comply both with the Regulation and the 1993 CIA Recommendations. Consequently, if an actuary calculates the commuted value, or recommends the basis to be used for calculating the commuted value, the actuary must use the greater of the 1988 or 1993 CIA Recommendations in order to comply with both the Regulation and the CIA requirements for terminations occurring between September 1 and December 31, 1993.

The requirement to use the greater of the 1988 or 1993 CIA Recommendations would also apply if the plan document requires that commuted values be calculated by an actuary or on a basis recommended by an actuary.

It is acceptable to determine the commuted value of benefits in respect of all years of service on a unisex basis if the CIA transition requirements are satisfied. That is, in certain circumstances the actuary can use or recommend a unisex basis for all benefits if the actuary has written direction from the plan administrator or sponsor that the plan will be retroactively amended to provide such unisex commuted values.

If a member is terminating on or after January 1, 1994 and the commuted value calculation was done before January 1, 1994, the 1993 CIA transfer values as prescribed in the Regulation must be used.

Commuted Values on Full or Partial Plan Termination

In the case of a full or partial plan wind up, the commuted values must be calculated by an actuary since section 16 of the Regulation requires that the wind up report be prepared by an actuary. Consequently, for wind ups between September 1, 1993 and December 31, 1993 inclusive, commuted values must be determined on the greater of the 1988 or 1993 CIA Recommendations.

In a wind up on or after September 1, 1993 and, in order to provide unisex commuted values for all benefits, the plan must be amended rather than relying on the CIA transitional rules.

PCO staff cannot accept wind up reports with a valuation date on or after September 1, 1993 with unisex commuted values for benefits in respect of all service unless:

- i) the report includes an indication that the plan document has a provision allowing the actuary to calculate such unisex commuted values; or
- ii) the report includes an indication that the plan document has a provision allowing the administrator to require the actuary to calculate such unisex commuted values and that such direction by the administrator has been provided.

Your Questions Answered

We are told by our readers that “Your Questions Answered” is one of the most popular sections of the PCO Bulletin. The section is based on enquiries from our readers and the facts that they provide to us. It must be remembered that, although you may believe you are in a situation similar to the one described in this section, the answer to any question is subject to the facts of each particular case.

Accordingly, the answers to the questions in this section have no legal authority nor should they be construed as legal, actuarial, accounting or other professional advice. You should obtain independent professional advice if you have a particular interest in any of the matters addressed in this section.

Q. Is an employer who funds a pension plan which provides plan members with an indexed pension benefit at retirement obligated to include indexation in the calculation of the deferred pension of a terminating member who has not elected to retire immediately?

A. Yes, if a pension plan contains a contractual provision for the payment of an indexed pension benefit, indexation must be included in the calculation of the deferred pension as required under subsections 36(3) and 37(3) of the PBA.

Where transfer options are available at termination, as required by the Act and as permitted under the terms of a pension plan, the commuted value of the deferred pension (including indexation) must be determined in accordance with the CIA's Recommendations for the Computation of Transfer Values. Upon commencement of the payment of a retirement pension, a deferred vested member is entitled to receive increases calculated in accordance with the indexation formula in effect at that individual's date of termination.

Q. I am an active member of a pension plan which will provide me with an indexed pension at retirement. Prior to my retirement, could the plan be amended to entirely eliminate the existing inflation protection provision?

A. No, an amendment which would have the effect of eliminating the obligation to index benefits already accrued or to freeze increases at the effective date of the amendment would be a void amendment under subsection 14(1) of the Act. However, an amendment which would have the effect of deleting the indexation provision in its entirety for future benefit accruals would be acceptable for registration under the Act.

In the latter instance, the amendment would affect active members only. Benefits accrued on and after the effective date of the amendment would not be indexed. The amendment would have no effect on the existing contractual requirement to provide ongoing cost-of-living increases for all benefits accrued to the effective date of the amendment (active members' benefits, pensions in pay and deferred vested benefits).

Q. In accordance with subsection 7(3) of the Regulations, in a year where an actuarial gain exists, the actuarial gain may be applied to reduce any employer contributions for normal costs. How is the employer's right to continue taking contribution holidays affected when the period covered by a valuation report has passed and a report for the following period (the subsequent period) has not yet been provided to the PCO?

A. Where the period covered by a report filed with or submitted to the PCO has passed, the plan administrator has a specified number of months to provide the PCO with a report which covers the subsequent period. Until a report covering the subsequent period is provided, subsection 4(5) of the Regulation permits the employer to continue funding the plan in accordance with the last submitted or filed report. Subsection 4(5) provides the authority for the employer to continue to apply actuarial gains identified in the last report to take contribution holidays over any period not covered by the report (i.e., the interim period between the end of the period covered by the last report and the date the report for the subsequent period is provided to the PCO).

If the report covering the subsequent period reveals that no actuarial gain existed during the interim period over which the employer continued to take contribution holidays, employer payments for normal costs over that interim period will be considered to be in arrears. Accordingly, when the report covering the subsequent period is provided to the PCO, immediate payment of all outstanding employer contributions plus applicable interest must be made to the plan fund.

- Q. In accordance with subsection 7(4) of the Regulations, in any year where an actuarial gain exists, subject to specified circumstances, an actuarial gain may be applied to pay the annual assessment to the Pension Benefits Guarantee Fund (the PBGF) which is otherwise required by subsection 37(1) to be paid by the employer. Is the employer permitted to use actuarial gains to pay an annual PBGF assessment for a period not covered by the last filed or submitted report?**
- A.** Subsection 4(5) of the Regulation provides the authority for an employer to continue taking contribution holidays in accordance with subsection 7(3) where the period covered by the last report filed with or submitted to the PCO has passed and the report for the subsequent period has not been provided to the PCO. However, no similar authority is provided with respect to the employer's right under subsection 7(4). Accordingly, an employer must not use surplus identified in a report to pay an annual PBGF assessment for a period not covered by the report (i.e., the interim period between the end of the period covered by the last report and the date the report for the subsequent period is provided to the PCO).
- Requirements applicable to the calculation of the annual PBGF assessment determined in accordance with the last filed or submitted report are identified under section 37 of the Regulations.
- Q. How does subsection 70(2) of the Act affect the settlement of a benefit entitlement where a sole member or the last member of a pension plan terminates employment?**
- A.** Subsection 70(2) restricts payment out of a plan fund in settlement of a wind up entitlement only and does not apply where a notice of proposal to wind up the plan has not been provided on or prior to the date of termination. If no subsection 68(2) notice has been given, the administrator may process the entitlement as a normal termination settlement.
- Q. My client has elected not to redetermine prior solvency deficiencies under subsection 5(8) of the Regulations and has filed an Election Report prepared in accordance with subsection 5(11). As a result of the re-amortization of prior solvency deficiencies to the end of 2002, a positive initial solvency balance as well as a positive prior year credit balance were reported in the Election Report. Calculations done subsequent to the filing revealed that a zero prior year credit balance could have been reported if the prior solvency deficiencies were not re-amortized. Is it possible to make a request to withdraw the filed report in order that a revised report which reflects the zero prior year credit balance calculation may be filed?**
- A.** Yes. A request for re-filing will be permitted as long as the revised report is received by the PCO before January 1, 1994. A written request to re-file an Election Report for a pension plan must be submitted to the Pension Officer responsible for the plan.
- Q. If a pension plan provides for a defined benefit past service entitlement and a defined contribution current service entitlement with a minimum defined benefit guarantee, is it acceptable to ignore the past service liabilities and the assets associated with those liabilities when determining PBGF liabilities and the PBGF assessment base?**
- A.** It is not acceptable to ignore the past service liabilities and the assets associated with those liabilities. In the event that the pension plan is wound up and the Commission makes a declaration under subsection 83(1) of the Act, amounts guaranteed by the PBGF would be determined in accordance with subsections 34(5) and (6) of the Regulations. Consequently, the method of determining the PBGF liabilities and the PBGF assessment base under a hybrid plan should be consistent with the method identified under subsections 34(5) and (6). The fact that the past service and current service portions of the plan may be administered separately has no impact on the requirement to identify all plan liabilities and assets with respect to the Ontario beneficiaries.
- Q. If I make a submission to a PCO staff person about a pension plan and that submission is marked "private and confidential", can it then be severed from the plan file when the file is made available to a plan member for inspection or when a member requests copies of plan information?**
- A.** Indicating that a letter or document is "privileged", "private" and/or "confidential" when addressed to an Ontario government office (which is bound by Freedom of Information and Protection of Privacy "FOIPOP" legislation) does not make it so.
- Section 29 (1) of the PBA provides that pension plan documentation and information must be made available to a plan member, former member, a spouse of a member or former member, any other person entitled to pension benefits under the pension plan, an agent authorized in writing by any of the foregoing, or a trade union representing members of a pension plan.
- All documents filed with the PCO are generally considered to be available to the public, unless exempted by a provision of the FOIPOP Act. The Ministry of Finance's FOIPOP Co-ordinator makes the decision with respect to any access request under that legislation. The decision may be appealed to the Information and Privacy Commissioner who will determine whether a document will be released under the FOIPOP Act. Final appeal may be made to the courts.

Registrants filing documents who believe that confidentiality should be respected for other reasons, such as personal privacy, should indicate such on the face of the document.

Q. Which Annual Information Returns must be filed before the Superintendent will approve a wind-up report?

- A. All of the requirements of the PBA and Regulations must be complied with before the Superintendent can approve the wind-up report and authorize distribution of plan assets.

Accordingly, PCO staff will require that all Annual Information Returns up to the effective date of the wind up must be filed and payment of the applicable filing fees must be received by the PCO before the Superintendent will approve the wind-up report.

In *Compliance Assistance Guideline # 4, Revised* December 1990 (page 5) the filings required as part of the wind-up process are discussed in more detail.

Q. Does the five-year period for the transfer of the commuted value by the employer to a former member where the plan is underfunded apply to former members between age 55 and 65?

- A. A pension plan member who terminates employment before his or her normal retirement date may elect to receive the commuted value of his/her pension pursuant to the transfer rights in section 42 of the PBA. However, where the plan is underfunded, the full amount cannot be transferred because of the resulting funding shortfall. The employer may take up to five years to complete the transfer pursuant to subsection 19(7) of the Regulations, regardless of the age of the terminating plan member.

The funding shortfall problem can be overcome if the employer is prepared to contribute the amount necessary to make up the difference between the full commuted value of the pension benefit and the amount the employee can take from an underfunded plan when the employee terminates.

This may result in the retired member receiving an initial lump sum payment that is large enough to annuitize, and over the next five years pension payments which are too small to be used to purchase separate annuity contracts. Where the initial payment has been annuitized, the former member must use the subsequent small payments to purchase a life annuity, or transfer to a locked-in RRSP, or into a LIF.

Q. Section 49 of the PBA allows variation in the terms of payment of the pension to persons with disabilities. How does the PCO determine whether a plan member or former member has a disability that is likely to "shorten considerably the life expectancy" of that member or former member, in order to satisfy the requirements of that section?

- A. The question of whether a member or former member has a disability that is likely to "shorten considerably the life expectancy" of that member or former member is essentially a medical question. The plan administrator must be satisfied that the conditions imposed by s. 49 are being met.

Furthermore, a financial institution which holds a locked-in RRSP for a former pension plan member, must be satisfied by the written medical opinion of a doctor that such a mental or physical disability exists.

Q. An employer sponsoring a defined contribution plan is facing serious economic hardship, and is unable at this time to pay the employer's contributions to the company pension plan. In order to avoid winding up the plan, the employer wants to temporarily suspend all employer and employee contributions for a defined period of time. Would such a plan amendment be permitted?

- A. No. Any amendment to a pension plan suspending contributions to the plan would contravene the funding rules in the PBA and Regulations since vesting continues to accrue although no contributions are made to the plan. Consequently, no amendment suspending contributions to the plan is permitted.

Q. May a pension plan restrict benefit improvements to those active, deferred, vested, and retired members who are union members?

- A. The PCO has registered many pension plans in which union membership is a condition of plan membership. In such a plan, union membership may be continued as a condition for eligibility to receive benefit improvements after active membership in the plan ceases (e.g., former members in retirement or those entitled to deferred pensions.)

Q. When a joint and survivor is waived, how is the commuted value of the new single life pension determined?

- A. Under the provision of s. 44, a pension must provide a survivor benefit upon death of a member during the joint lives of the member and the member's spouse which shall not be less than 60% of the pension amount payable to the member during the joint lives of the member and the member's spouse.

When this benefit is waived, the formula by which the new single life pension is determined, is not set out. Depending on the basis used for commutation, the commuted value of the new single life pension could be greater than that of a normal commuted value for someone who does not have a spouse at the date of retirement.

When a joint and survivor benefit is waived, the commuted value of the member's pension should be based on a single life, without regard for the existence of a spouse. If a plan wishes to provide otherwise, it must specifically so state in the provisions of the text.

Q. A consultant asks whether the consulting house can generate a computer version of PBA prescribed forms? This is expected to facilitate accurate completion and timely filing.

A. At this time, the PCO would not have any difficulty with firms inputting all requirements of most prescribed forms and reproducing these prescribed forms such that the contents and appearance of the form are virtually identical to the prescribed forms as they appear in the PBA.

The exception to this is the Annual Information Return which is pre-printed and supplied by the PCO to all plan sponsors or administrators.

PCO Conference on the BBS: New and Improved

Most *PCO Bulletin* readers are aware that the PCO uploaded its published policies to a public conference on an electronic bulletin board system (BBS) operated by CRS Online in April 1993. Shortly after, problems became apparent. Among the most irksome were problems associated with the index and text wrap-around which indicated formatting incompatibilities between the source documents and the software used by the BBS.

We sincerely regret any inconvenience these problems may have caused for subscribers.

In the meantime, we have learned much. We have corrected and improved the index and the policy file area. We also plan to expand the body of information on the BBS by making Commission tribunal decisions available in the spring of 1994. Therefore, we ask prospective subscribers to consider and subscribers to reassess the benefits of the BBS.

We remain committed to the BBS medium for the transmission to our stakeholders of time-sensitive information and all PCO policies and Commission tribunal decisions - in two convenient versions.

Improvements and Features

By mid January, subscribers accessing the BBS will notice the following improvements and features:

- a) an improved index format;
- b) key words and section references in index to facilitate file searches;
- c) updated and standardized policy content;
- d) standardized format; and
- e) policies available in two versions: WP 5.1 for DOS and ASCII.

BBS users will be able to download all PCO published policies and in future, all Commission tribunal decisions, in the version most suited to their computer hardware and software.

Users should note that all files in various areas of the PCO conference - the News area, the index and the files - are viewed on-line in ASCII version only. The reason for this is dictated by the software which operates the bulletin board system. This software, *PCBoard*, also has certain formatting characteristics which all PCO policies now meet.

Characteristics of the BBS Index of PCO Policies

Users are encouraged to familiarize themselves with the BBS index of published policies which appears in this issue of the *PCO Bulletin* in order to appreciate the topical organization of the index. The index is sorted in an alphanumeric sequence and has been developed with key words and subjects in mind. The key word search method ensures quick retrieval of policies and related material.

We have published a complete listing of PCO published policies, in the pages that follow, which simulates the on-line index. (Additional policies uploaded to the BBS will be listed in future *PCO Bulletin* issues.)

New Format for PCO Policies

The format of the policy that now appears on-screen is revised to meet the requirements of the BBS software. You will notice that the presentation of the policy in WP and ASCII versions differs slightly. (Please refer to examples of the policy presentation in *Administrative Practices* section, which begins on page 8 of the *PCO Bulletin*.)

Timely Information - PCO News

There will be greater reliance in future on this area of the BBS for disseminating information to stakeholders. On joining the conference users can access "news" and will find PCO announcements in reverse chronological order that is, with the most recent news items appearing on top. Users wishing to download news items should follow the instructions in the main menu.

BBS in the Future

PCO stakeholders will notice that the BBS and future issues of the *PCO Bulletin* will complement each other. For instance, the *PCO Bulletin* will include a list of all policies uploaded to the BBS in the intervening period. Announcements of a non-policy nature could also appear on the BBS News which may be followed-up by a fuller explanation in the *PCO Bulletin*.

We hope you are encouraged by what you see on the PCO's conference on the BBS in the coming months and welcome your comments. With proper maintenance, we expect to demonstrate that the BBS is an efficient and effective medium for disseminating pension information.

PCO POLICIES AVAILABLE ON AN ELECTRONIC BULLETIN BOARD (BBS)

Are you a BBS subscriber? Do you want to know more about the service? Would you like the PCO to host a workshop for BBS subscribers?

A subscription with CRS Online entitles the subscriber to access all public conferences including the PCO Conference. At this time, we are unable to identify those with a specific interest in the PCO Conference. We want to support you as much as possible and ask that you complete the questionnaire below, register as a subscriber or prospective subscriber and fax the information to Judith Chalmers, Senior Communications Officer at 416-314-0650.

On receipt, we will mail you a *BBS/PCO Conference Information Package*.

* * *

_____ I have been a subscriber to the PCO Conference on the BBS since _____ 1993/1994.
(Month)

_____ I am interested in becoming a subscriber and want to learn more.

_____ Please send me the BBS/PCO Conference Information Package.

_____ I would be interested in attending a half-day workshop for subscribers.

Name/Title _____

Company _____

Address _____

City _____

Postal Code _____

Phone _____

Fax _____

Index of PCO Policies on the BBS

!INDEX AS.EXE	** Self-extracting zip file containing an index of all PCO files in ASCII format	A200-850.EXE	POLICY: ADMINISTRATIVE EXPENSES - PBGF assessment - O. Reg. 708/87 s. 33 (Feb 1992 Bulletin 2/4 p. 11)
!POLASC01.EXE	** Self-extracting zip file containing all PCO files in ASCII format	A200-900.EXE	POLICY: ADMINISTRATIVE EXPENSES - expenses payable from pension fund (Sep 1990 Bulletin 1/3 p. 17)
!POLWP01.EXE	** Self-extracting zip file containing policies - A050-075 to I400-700 in Wordperfect v5.1 format	A300-100.EXE	POLICY: ADMINISTRATOR - role and responsibilities (May 1990 Bulletin 1/2 p. 8)
!POLWP02.EXE	** Self-extracting zip file containing policies - L050-500 to W100-450 in Wordperfect v5.1 format	A300-150.EXE	POLICY: ADMINISTRATOR - role and responsibilities (Oct 1992 Bulletin 3/2 p. 6)
A050-075.EXE	POLICY: ACTUARIAL REPORTS - change to actuarial review procedure (Dec 1992 Bulletin 3/3 p.11)	A300-300.EXE	POLICY: ADMINISTRATOR - insurance company not administrator for annuity contracts, PBA 1987 ss. 8(d) (May 1990 Bulletin 1/2 p. 14)
A050-100.EXE	POLICY: ACTUARIAL REPORTS - compliance with actuarial professional standards (March 1993 Bulletin 3/4 p. 2)	A300-400.EXE	POLICY: ADMINISTRATOR - c. 8(1)(e) is mandatory for MEPPs established by collective agreements or trust agreements, PCO decision effective June 26, 1991 (Nov 1991 Bulletin 2/3 p. 16)
A050-102.EXE	POLICY: ACTUARIAL REPORTS - actuarial assumption guidelines for final average plans - approval of actuarial reports (Feb 1990 Bulletin 1/1 p. 8)	A300-800.EXE	POLICY: ADMINISTRATOR - requirement to provide information to members (March 1991 Bulletin 2/1 p. 13)
A050-900.EXE	POLICY: ACTUARIAL REPORTS - requirements for submission of actuarial reports & cost certificates (July 1991 Bulletin 2/2 p. 9)	A300-801.EXE	POLICY: ADMINISTRATOR - requirement to make documents available on request, PBA 1987 s. 30 (July 1991 Bulletin 2/2 p. 26)
A200-100.EXE	POLICY: ADMINISTRATIVE EXPENSES - consulting and actuarial fees for bargaining purposes not payable from pension fund, PBA 1987 ss. 23(9) (July 1991 Bulletin 2/2 p. 10)	A350-500.EXE	POLICY: PLAN ADVISORY COMMITTEES (MEMBERS) - purpose (Feb 1990 Bulletin 1/1 p. 6)
A200-200.EXE	POLICY: ADMINISTRATIVE EXPENSES - payable from pension fund (July 1991 Bulletin 2/2 p. 10)	A400-200.EXE	POLICY: AMENDMENTS - challenge to an adverse amendment (Sep 1990 Bulletin 1/3 p. 17)
A200-400.EXE	POLICY: ADMINISTRATIVE EXPENSES - finders fee or insurance broker commission payable from pension fund PBA 1987 s. 22 (May 1990 Bulletin 1/2 p. 13)	A400-900.EXE	POLICY: AMENDMENTS - surplus withdrawal amendments PBA 1987 s. 79 (March 1993 Bulletin 3/4 p. 17)
A200-800.EXE	POLICY: ADMINISTRATIVE EXPENSES - payment on windup, PBA 1987 ss. 71(2) (May 1990 Bulletin 1/2 p. 13)	A500-100.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - fees due whether application of registration filed & late filing fees, PBA 1987 ss. 9(1) (July 1991 Bulletin 2/2 p. 11)

A500-105.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - deadlines for filing AIRs with fees PBA 1987 s. 21, s. 15 (Feb 1990 Bulletin 1/1 p. 7)	A700-100.EXE	POLICY: ASSETS - asset transfer on reorganization (Nov 1991 Bulletin 2/3 p. 15)
A500-106.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - filing deadlines for plans other than defined contribution plans (Mail distribution)	A700-126.EXE	POLICY: ASSETS - asset transfer - successor plans PBA s. 80 (Dec 1992 Bulletin 3/3 p. 11)
A500-150.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - forms (Feb 1990 Bulletin 1/1 p. 6)	A700-150.EXE	POLICY: ASSETS - notification of change of carrier (Feb 1990 Bulletin 1/1 p. 7)
A500-200.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - late fees (Nov 1991 Bulletin 2/3 p. 15)	A700-152.EXE	POLICY: ASSETS - types of asset transfers PBA s. 79-81 (Feb 1992 Bulletin 2/4 p. 10)
A500-225.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - new fees, effective Dec 17, 1992 O.Reg. 778/92 (March 1993 Bulletin 3/4 p. 10)	A700-200.EXE	POLICY: ASSETS - asset transfer resulting from sale of business - Policy Statement 2 July 28, 1988, 6 pp.
A500-250.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - Revenue Canada annual information return (Feb 1992 Bulletin 2/4 p. 7)	A700-300.EXE	POLICY: ASSETS - superintendent consent to transfer of assets (sale before 1/1/88, transfer after 1/1/88) (May 1990 Bulletin 1/2 p. 13)
A500-300.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - notice of revised annual information return - O.Reg. 402/91 effective July 19, 1991 (Nov 1991 Bulletin 2/3 p. 12)	B100-100.EXE	POLICY: BENEFITS - definition of bridge benefit (March 1991 Bulletin 2/1 p. 14)
A500-900.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - unsigned AIRs (May 1990 Bulletin 1/2 p. 5)	B100-125.EXE	POLICY: BENEFITS - garnishment of pensions in pay PBA s. 66 (March 1993 Bulletin 3/4 p. 13)
A600-600.EXE	POLICY: ANNUITIES - guaranteed annuity contracts O. Reg. 629/92, eff. Oct 9/92 (Dec 1992 Bulletin 3/3 p. 7)	B100-200.EXE	POLICY: BENEFITS - pregnancy and parental leave (July 1991 Bulletin 2/2 p. 4) revised by erratum published in (November 1991 Bulletin 2/3 p. 1)
A600-900.EXE	POLICY: ANNUITIES - fully-insured money purchase group annuity (Dec 1990 Bulletin 1/4 p. 10)	B100-202.EXE	POLICY: BENEFITS - pregnancy and parental leave - employee contributions (Feb 1992 Bulletin 2/4 p. 11)
A600-950.EXE	POLICY: ANNUITIES - mortality tables & sex discrimination O. Reg. 708/87 ss. 18(3) (Dec 1992 Bulletin 3/3, p. 17)	B100-204.EXE	POLICY: BENEFITS - pregnancy and parental leave governed by Employment Standards Amendment Act (Feb 1992 Bulletin 2/4 p. 11)
		B100-205.EXE	POLICY: BENEFITS - pregnancy and parental leave cannot be conditional (Feb 1992 Bulletin 2/4 p. 11)

B100-225.EXE	POLICY: BENEFITS - portability rights if vested but not locked in (March 1993 Bulletin 3/4 p. 17)	C200-100.EXE	POLICY: CONVERSION - from defined benefit to defined contribution - effective Aug 30, 1991 (Nov 1991 Bulletin 2/3 p. 13)
B100-250.EXE	POLICY: BENEFITS - improvement of benefits in on-going plans (July 1991 Bulletin 2/2 p. 10)	C200-150.EXE	POLICY: CONVERSION - defined contribution to defined benefit (May 1990 Bulletin 1/2 p. 13)
B100-300.EXE	POLICY: BENEFITS - value of deferred pension, PBA 1987 ss. 40(1) (July 1991 Bulletin 2/2 p. 10)	C200-700.EXE	POLICY: CONVERSION - past benefits - members option (Feb 1992 Bulletin 2/4 p. 11)
B100-800.EXE	POLICY: BENEFITS - same-sex spousal benefits - Leshner ruling explained (Dec 1992 Bulletin 3/3 p. 8)	D050-200.EXE	POLICY: DEADLINES - deadline for membership not acceptable (Sep 1990 Bulletin 1/3 p.11)
B100-900.EXE	POLICY: BENEFITS - transfer to locked-in RRSP may result in loss of rights (March 1993 Bulletin 3/4 p. 17)	D050-800.EXE	POLICY: DEADLINES - extension of deadline for funding in active defined benefit plans PBA 1987 s. 106, effective Dec 19/91 (Feb 1992 Bulletin 2/4 p. 10)
C100-100.EXE	POLICY: CLASS OF EMPLOYEE - clarification (formerly Interpretation Bulletin I, PBA s. 31-34 (Dec 1993 Bulletin 4/2 p. 12)	E050-050.EXE	POLICY: EARLY RETIREMENT WINDOWS - for applications received after March 26, 1992 (June 1992 Bulletin 3/1 p.11)
C100-300.EXE	POLICY: CLASS OF EMPLOYEE - class and eligibility PBA 1987 ss. 32(1) (Sep 1990 Bulletin 1/3 p. 11)	F100-150.EXE	POLICY: FINANCIAL STATEMENTS - CICA guideline for annual audited statements (Feb 1992 Bulletin 2/4 p. 7)
C100-650.EXE	POLICY: CLASS OF EMPLOYEE - individuals (Sep 1990 Bulletin 1/3 p. 11)	F100-300.EXE	POLICY: FINANCIAL STATEMENTS - master trust arrangements O. Reg 708/87 s. 72 (Mail distribution Sep 8, 1989)
C100-700.EXE	POLICY: CLASS OF EMPLOYEE - more advantageous pension benefits or ancillary benefits permitted PBA s. 5 (Sep 1990 Bulletin 1/3 p. 11)	F100-400.EXE	POLICY: FINANCIAL STATEMENTS - fund statements or plan statements O. Reg 708/87 s. 72 (May 1990 Bulletin 1/2 p. 14)
C100-800.EXE	POLICY: CLASS OF EMPLOYEE - requirements for full and part-time employees (Sep 1990 Bulletin 1/3 p. 11)	F100-401.EXE	POLICY: FINANCIAL STATEMENTS - revised filing requirements on financial statements O. Reg. 712/92, effective Nov 26, 1992 (March 1993 Bulletin 3/4 p. 14)
C100-801.EXE	POLICY: CLASS OF EMPLOYEE - part-time employees and YMPE test (May 1990 Bulletin 1/2 p. 14)	F800-050.EXE	POLICY: FUNDING OF PLANS - solvency funding & pension benefits guarantee fund - amendments to regulation, O. Reg. 712/92 only available in WordPerfect 5.1 (EXE) (March 1993 Bulletin 3/4 p. 4)
C100-890.EXE	POLICY: CLASS OF EMPLOYEE - seasonal workers (Sep 1990 Bulletin 1/3 p. 11)	F800-051.EXE	POLICY: FUNDING OF PLANS - impact of solvency funding (Mar 1993 Bulletin 3/4 p. 13)
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F800-100.EXE	POLICY: FUNDING OF PLANS - contribution holidays for members; employee contributions, payroll deductions (Oct 1992 Bulletin 3/2 p. 14)	I200-300.EXE	POLICY: INTEREST - minimum and maximum rates (March 1991 Bulletin 2/1 p. 13)
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F800-300.EXE	POLICY: FUNDING OF PLANS - contributory and non-contributory pension plans (May 1990 Bulletin 1/2 p. 14)	I200-700.EXE	POLICY: INTEREST - on late AIR fees (Oct 1992 Bulletin 3/2 p. 14)
F800-400.EXE	POLICY: FUNDING OF PLANS - employer contributions based on RRSP contributions (Oct 1992 Bulletin 3/2 p. 7)	I300-200.EXE	POLICY: INTER-JURISDICTIONAL ISSUES - compliance amendments required for Quebec members (Jul 1991 Bulletin 2/2 p. 5)
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G100-600.EXE	POLICY: GRADUAL AND UNIFORM - benefit accrual in defined benefit and defined contribution plans PBA 1987 s. 11 (May 1990 Bulletin 1/2 p. 7)	I300-400.EXE	POLICY: INTER-JURISDICTIONAL ISSUES - reciprocal agreement - CAPSA 1968 document (3 p.)
G100-700.EXE	POLICY: GRADUAL AND UNIFORM - benefit accrual - application to MEPP PBA 1987 s. 11 (Dec 1990 Bulletin 1/4 p. 9)	I300-500.EXE	POLICY: INTER-JURISDICTIONAL ISSUES - reciprocal agreement, CAPSA suggested changes (Nov 1991 Bulletin 2/3 p. 11)
I150-500.EXE	POLICY: INFORMATION - Freedom of Information & Protection of Privacy Act (FOIPOP) - how to obtain information (Feb 1990 Bulletin 1/1 p. 6 & updated)	I400-300.EXE	POLICY: INVESTMENT OF PENSION FUNDS - derivative instruments - futures and options (Sep 1990 Bulletin 1/3 p. 13)
I150-600.EXE	POLICY: INFORMATION - Freedom of Information & Protection of Privacy Act (FOIPOP): interim administrative practice - FOIPOP 1987 s. 17 (Feb 1990 Bulletin 1/1 p. 8)	I400-350.EXE	POLICY: INVESTMENT OF PENSION FUNDS - ethical investments (Feb 1992 Bulletin 2/4 p. 11)
I200-100.EXE	POLICY: INTEREST - average fund rate for employee contributions (Mar 1991 Bulletin 2/1 p. 13)	I400-500.EXE	POLICY: INVESTMENT OF PENSION FUNDS - letters of credit as collateral in securities lending, O. Reg. 708/87 ss. 73(b) (Sep 1990 Bulletin 1/3 p. 9)
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I400-700.EXE	POLICY: INVESTMENT OF PENSION FUNDS - securities investments O. Reg. 708/87 s. 75 (Dec 1990 Bulletin 1/4 p. 3)	L100-600.EXE	POLICY: LOCKING IN - self-directed RRSPs & home mortgages (Oct 1992 Bulletin 3/2 p. 5)
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L050-501.EXE	POLICY: LIFE INCOME FUND - amendments to the ITA (Canada) regulation & the effect on LIFs (March 1993 Bulletin 3/4 p. 1)	M100-200.EXE	POLICY: MEMBERSHIP - deadline for membership not acceptable (Sep 1990 Bulletin 1/3 p. 11)
L050-700.EXE	POLICY: LIFE INCOME FUND - spousal death benefit (March 1993 Bulletin 3/4 p. 16)	M100-500.EXE	POLICY: MEMBERSHIP - mandatory vs voluntary PBA 1987 s. 10 (May 1990 Bulletin 1/2 p. 13)
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L100-075.EXE	POLICY: LOCKING IN - interest locked in (June 1992 Bulletin 3/1 p. 13)	M100-700.EXE	POLICY: MEMBERSHIP - no transfer on suspension of plan membership - PBA 1987 s. 64 (Feb 1990 Bulletin 1/1 p. 6)
L100-100.EXE	POLICY: LOCKING IN - locked-in RRSP can purchase annuity at age 55 (July 1991 Bulletin 2/2 p. 11)	M100-800.EXE	POLICY: MEMBERSHIP - students generally not eligible PBA 1987 s. 1 (May 1990 Bulletin 1/2 p. 14)
L100-125.EXE	POLICY: LOCKING IN - effect of legislation (June 1992 Bulletin 3/1 p. 6)	M200-150.EXE	POLICY: MERGER OF PLANS - general procedures for plan mergers PBA 1987 s. 82, effective Feb. 1, 1990 (May 1990 Bulletin 1/2 p. 6)
L100-150.EXE	POLICY: LOCKING IN - locked-in RRSP funds - annuities (Dec 1992 Bulletin 3/3 p. 17)	M200-151.EXE	POLICY: MERGER OF PLANS - merger policy, September 1993 (Published BBS - September 16, 1993; Dec 1993 Bulletin 4/2 p. 8)
L100-200.EXE	POLICY: LOCKING IN - locked-in RRSP cannot be transferred to a RRIF (also ref. life income fund) (Feb 1990 Bulletin 1/1 p. 6)	M900-100.EXE	POLICY: MULTI-EMPLOYER PENSION PLANS (MEPPs) - collection of contributions and delinquencies, PBA 1987 s. 56, s. 58 (May 1990 Bulletin 1/2 p. 8)
L100-300.EXE	POLICY: LOCKING IN - locking in of pension funds when member leaves the country (March 1991 Bulletin 2/1 p. 13)	N300-100.EXE	POLICY: NOTICE REQUIREMENTS - guideline - notice of wind up of pension plan, PBA ss 68(2), formerly Policy Statement I: Notice Requirements (Dec 1993 Bulletin 4/2 p. 15)
L100-400.EXE	POLICY: LOCKING IN - on termination (Feb 1990 Bulletin 1/1 p. 5)	O100-100.EXE	POLICY: ONE-PERSON PLANS - approaches and Revenue Canada considerations (Dec 1990 Bulletin 1/4 p. 8)
L100-500.EXE	POLICY: LOCKING IN - non-redeemable RRSP investment (Dec 1992 Bulletin 3/3 p. 17)		

P200-200.EXE	POLICY: PENSION BENEFITS GUARANTEE FUND (PBGF) - assessment and member fees (July 1991 Bulletin 2/2 p. 11)	R400-200.EXE	POLICY: REFUND OF CONTRI- BUTIONS TO PLAN MEMBERS - applications to Commission - funding deficiency, PBA 1987 ss. 64(7) (July 1991 Bulletin 2/2 p. 11)
P200-300.EXE	POLICY: PENSION BENEFITS GUARANTEE FUND (PBGF) - coverage and funding (March 1991 Bulletin 2/1 p. 16)	R500-100.EXE	POLICY: REGISTRATION - changing province of registration (Nov 1991 Bulletin 2/3 p. 15)
P200-850.EXE	POLICY: PENSION BENEFITS GUARANTEE FUND (PBGF) - assessment as administrative expense (Feb 1992 Bulletin 2/4 p. 11)	R500-200.EXE	POLICY: REGISTRATION - preparing application for registration Published Feb 1990, Compliance Assistance Guideline No. 1
P300-250.EXE	POLICY: PENSION COMMISSION OF ONTARIO (PCO) PROCEDURES - 1) how to get assistance from the PCO (Feb 1990 Bulletin 1/1 p. 2, reprinted Feb 1992 Bulletin 2/4 p. 9) 2) telephone enquiries to the PCO (Dec 1992, Bulletin 3/3 p. 8)	R500-250.EXE	POLICY: REGISTRATION - guide to completing a pension plan document checklist, PBA s. 98 Published Oct 1990, Compliance Assistance Guideline No. 5 effective Nov 1, 1992
P300-350.EXE	POLICY: PENSION COMMISSION OF ONTARIO (PCO) PROCEDURES - no civil collection by PCO (Jun 1992 Bulletin 3/1 p. 12)	R500-301.EXE	POLICY: REGISTRATION - pension plan document checklist, PCO form 03045(92) (8 pp.) only available on WordPerfect 5.1 (EXE) effective Nov 1, 1992
P400-300.EXE	POLICY: POOLED FUND CENTRAL REGISTRY - description (Sep 1990 Bulletin 1/3 p. 12)	R500-302.EXE	POLICY: REGISTRATION - notice of revised document checklist (Oct 1992 Bulletin 3/2 p. 6)
P400-500.EXE	POLICY: POOLED FUND CENTRAL REGISTRY - simplified filing procedure notice distributed effective Jul 25/89	R500-350.EXE	POLICY: REGISTRATION - legal effect (Sep 1990 Bulletin 1/3 p. 5)
R350-100.EXE	POLICY: REFUND OF EMPLOYER OVERPAYMENT - notice to members a necessary pre-condition (May 1990 Bulletin 1/2 p. 5, revised March 1993 Bulletin 3/4 p.15)	R600-600.EXE	POLICY: RESTATED PLAN DOCUMENTS - amendment, registration not confirmed (July 1991 Bulletin 2/2 p. 10)
R400-100.EXE	POLICY: REFUND OF CONTRI- BUTIONS TO PLAN MEMBERS - applications to Commission - consent to a refund, PBA 1987 ss. 64(7) effective Aug 30, 1991 (Nov 1991 Bulletin 2/3 p. 13)	R700-100.EXE	POLICY: RETIREMENT - normal retirement date, PBA 1987 s. 36 (March 1991 Bulletin 2/1 p. 14)
R400-105.EXE	POLICY: REFUND OF CONTRI- BUTIONS TO PLAN MEMBERS - refund to active members PBA 1987 ss 64(2) (July 1991 Bulletin 2/2 p. 10)	R700-200.EXE	POLICY: RETIREMENT - mandatory retirement date, also ref. PBA 1987 ss. 36(3) and (4) (March 1991 Bulletin 2/1 p. 14)
		R700-500.EXE	POLICY: RETIREMENT - mandatory retirement (March 1991 Bulletin 2/1 p. 14)
		S500-300.EXE	POLICY: SPOUSAL RIGHTS - joint & survivor requirement & waiver (Feb 1990 Bulletin 1/1 p. 6)

S500-500.EXE	POLICY: SPOUSAL RIGHTS - marriage breakdown & pension credits (March 1993 Bulletin 3/4 p. 15)	S900-250.EXE	POLICY: SURPLUS - court applications - surplus entitlement in wound-up plans effective April 23 1992 (Oct 1992 Bulletin 3/2 p. 4)
S500-600.EXE	POLICY: SPOUSAL RIGHTS - additional options to spouse on marriage breakdown (July 1991 Bulletin 2/2 p. 11)	S900-500.EXE	POLICY: SURPLUS - distribution to employer on wind up PBA s. 78, 79 & O. Reg. 708 7a(1)(b) effective May 28 1992 (Oct 1992 Bulletin 3/2 p. 8)
S500-700.EXE	POLICY: SPOUSAL RIGHTS - options to spouse on marriage break down PBA 1987 ss. 52(5) (July 1991 Bulletin 2/2 p.11)	S900-550.EXE	POLICY: SURPLUS - procedures under ss. 7a(2) of O. Reg. 708/87 (grandfathering provision) O. Reg 743/91 ss. 7a(2) eff. Apr 23/92 (Oct 1992 Bulletin 3/2 p. 13)
S700-050.EXE	POLICY: STATEMENT OF INVESTMENT POLICIES AND GOALS (SIP&G) - conflicts of interest & code of ethics (Feb 1990 Bulletin 1/1 p. 7)	S900-600.EXE	POLICY: SURPLUS - court & PCO procedure for application under ss. 7a(2)(c) - O. Reg. 708/87 effective Aug 30 1991 (Nov 1991 Bulletin 2/3 p. 12)
S700-051.EXE	POLICY: STATEMENT OF INVESTMENT POLICIES AND GOALS (SIP&G) - conflict of interest requirement (Feb 1992 Bulletin 2/4 p. 7)	S900-700.EXE	POLICY: SURPLUS - access to surplus in on-going plans permitted by O. Reg. 708/87 ss. 7(c) effective July 27 1990 (Sep 1990 Bulletin 1/3 p. 6)
S700-100.EXE	POLICY: STATEMENT OF INVESTMENT POLICIES AND GOALS (SIP&G) - guide to completing a SIP&G Compliance Assistance Guideline No. 3 effective May 1990	S900-800.EXE	POLICY: SURPLUS - attributable to employer/employees PBA ss. 78(2) & O. Reg. 909 ss. 28(5) effective June 14 1993 (Aug 1993 Bulletin 4/1 p. 27)
S700-250.EXE	POLICY: STATEMENT OF INVESTMENT POLICIES AND GOALS (SIP&G) - confirmation or amendment - notification to PCO (Dec 1990 Bulletin 1/4 p. 11)	T500-300.EXE	POLICY: TRANSFER RIGHTS - fully-insured money purchase group annuity, PBA 1987 s. 43 (Dec 1990 Bulletin 1/4 p. 10)
S700-300.EXE	POLICY: STATEMENT OF INVESTMENT POLICIES AND GOALS (SIP&G) - Income Tax Act regulations - foreign content change (Nov 1991 Bulletin 2/3 p. 7)	T500-500.EXE	POLICY: TRANSFER RIGHTS - timing of termination statement - O. Reg. 708/87 s. 37, 38 & 40 (May 1990 Bulletin 1/2 p. 14)
S700-350.EXE	POLICY: STATEMENT OF INVESTMENT POLICIES AND GOALS (SIP&G) - filing of investment policy return (Sep 1990 Bulletin 1/3 p. 17)	T500-600.EXE	POLICY: TRANSFER RIGHTS - transfer commuted value to other plan PBA 1987 s. 43 (Dec 1990 Bulletin 1/4 p. 11)
S900-050.EXE	POLICY: SURPLUS - adequacy of surplus withdrawal application, ss. 22 (3) of O. Reg. 708/87 repealed effective Oct 9, 1992 (Dec 1992 Bulletin 3/3 p. 8)	T800-201.EXE	POLICY: TRANSFER VALUES - mortality tables for calculation - CIA recommendations (July 1991 Bulletin 2/2 p. 10)
		W100-100.EXE	POLICY: WIND UP - a guide to wind up of a pension plan Compliance Assistance Guideline No. 4 (revised Dec 1990)

W100-125.EXE POLICY: WIND UP -
| employer intention respecting surplus
| in a wind-up report
| (July 1991 Bulletin 2/2 p. 11)

W100-150.EXE POLICY: WIND UP -
| defined benefit plan -
| Superintendent's checklist for
| compliance on plan wind up
| only available on WordPerfect 5.1
| (EXE)
| effective June 6 1991

W100-151.EXE POLICY: WIND UP -
| defined contribution plan -
| Superintendent's checklist for
| compliance on plan wind up
| only available on WordPerfect 5.1
| (EXE)
| effective June 6 1991

W100-200.EXE POLICY: WIND UP -
| filing deadlines, O. Reg. 909 s. 64,
| O. Reg. 629/92, effective Oct 9, 1992
| (Dec 1992 Bulletin 3/3 p. 8)

W100-225.EXE POLICY: WIND UP -
| vesting, locking in & growing in on
| wind up
| (Oct 1992 Bulletin 3/2 p. 4)

W100-230.EXE POLICY: WIND UP -
| individual statement at wind up,
| O. Reg. 909 s. 28(2)(t), O. Reg. 629/92
| (Dec 1992 Bulletin 3/3 p. 7)

W100-275.EXE POLICY: WIND UP -
| plan with no members, PBA s. 68
| (June 1992 Bulletin 3/1 p. 12)

W100-301.EXE POLICY: WIND UP -
| notice of proposal for partial wind up
| PBA, ss. 68(2) & (3)
| effective June 24 1993
| (Aug 1993 Bulletin 4/1 p. 23)

W100-435.EXE POLICY: WIND UP -
| payment of immediate pensions
| (Feb 1992 Bulletin 2/4 p. 10)

W100-450.EXE POLICY: WIND UP -
| significant numbers of members
| PBA 1987 ss. 70(1)(d)
| (Sep 1990 Bulletin 1/3 p. 17)

Superintendent of Pensions - Notices and Orders

Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, R.S.O. 1990, c. P.8 [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) *Sound Insight Limited Pension Plan for Executive Employees* (C-18819), August 18, 1993
- 2) *Pension Plan for Controlling Significant Shareholder Employees of Timberlea Packaging Inc.* (C-104188), August 19, 1993
- 3) *Westinghouse Canada Inc. Consolidated Pension Plan* (C-9356), August 23, 1993 (partial)
- 4) *Union Electric Supply Co. Limited Executive Pension Plan "B"* (C-23370), August 24, 1993
- 5) *Consolidated GenCorp Canada Inc. Hourly Pension Plan* (C-14498), amended September 1, 1993 (partial)
- 6) *Consolidated GenCorp Canada Inc. Salaried Pension Plan* (C-6895), amended September 1, 1993 (partial)
- 7) *Canadian Bird Equipment Limited Employees Pension Plan* (C-12574), September 1, 1993
- 8) *Retirement Income Plan for Salaried Employees of Savage Shoes Limited* (C-18831), September 27, 1993
- 9) *Pension Plan for Hourly Employees of Savage Shoes Limited* (C-17059), September 27, 1993
- 10) *The Pension Plan for Paja Group Inc.* (C-15016), October 20, 1993
- 11) *Revised Employees' Pension Plan for Employees of Matrix Steel Corp.* (C-19997), October 20, 1993
- 12) *The Pension Plan for Standard Optical Company Limited* (C-18078), October 20, 1993
- 13) *Imperial Optical Company Ltd. Employees Pension Plan* (C-17745), October 20, 1993
- 14) *Pension Plan for the Employees of O'Neill-Bernhardt Limited* (C-13683), October 20, 1993
- 15) *Retirement Plan for the Employees of Lomar Mechanical Corporation Limited* (C-103969), October 20, 1993
- 16) *Retirement Plan for the Employees of Steel City Truck Lines Limited* (C-101940), October 20, 1993

- 17) *Retirement Plan for the Employees of Delmar Contracting Limited* (C-8691), October 28, 1993
- 18) *Imperial Optical Company Ltd. and Subsidiary and Affiliated Companies Pension Plan* (C-8230), November 17, 1993

Orders

The Superintendent issued Orders, pursuant to section 69 of the PBA (wind-up orders), as follows (effective date of wind up and date of order indicated, respectively):

- 1) *The Pension Plan of Union Drawn Steel Company Limited for Eligible Salaried Employees Effective December 15, 1955* (C-5906), (effective February 25, 1993, July 23, 1993)
- 2) *The Pension Plan of Union Drawn Steel Company Limited Effective September 1, 1955* (C-5905), (effective February 25, 1993, July 23, 1993)
- 3) *Sketchley Cleaning Services Limited Employees Pension Plan* (C-15968), (effective January 15, 1992, August 12, 1993)
- 4) *Sketchley Cleaning Services Limited Corporate Pension Plan* (C-102999), (effective January 15, 1992, August 12, 1993)
- 5) *Creeds Limited Employees' Pension Plan* (C-6559), (effective November 9, 1990, August 12, 1993)
- 6) *Pension Plan for Hourly-Rated Employees of Provincial Crane Inc.* (C-102256), (effective December 6, 1991, August 12, 1993)
- 7) *Pension Plan for Salaried Employees of Provincial Crane Inc.* (C-102257), (effective December 31, 1989, August 12, 1993)
- 8) *Staff Pension Plan for Employees of R.B.P. (Canada) Limited* (C-16901), (effective December 31, 1990, August 12, 1993)
- 9) *Smith Brothers Inc. Pension Plan* (C-1114), (effective December 23, 1991, August 17, 1993)
- 10) *St. Lawrence Foods Corporation Pension Plan* (C-5475), (effective October 31, 1991, September 16, 1993)
- 11) *Bell Technical Services Inc. Retirement Plan for Salaried Employees* (C-101754), (effective November 4, 1991, September 16, 1993)
- 12) *Pension Plan for Employees of Richmond Bros. Insulation Inc.* (C-102967), (effective September 28, 1988, September 16, 1993)
- 13) *Van Dresser Limited Non-Contributory Pension Plan* (C-100753), (effective May 5, 1992, September 16, 1993)

- 14) *Van Dresser Limited Employees' Pension Plan (C-12548)*, (effective May 5, 1992, September 16, 1993)
- 15) *Retirement Plan for the Employees of Smart Turner Limited (C-11407)*, (effective June 16, 1992, September 16, 1993)
- 16) *Peter's Backyard Restaurant Ltd. Employees' Pension Plan (C-18342)*, (effective July 31, 1989, September 28, 1993)
- 17) *Canadian Bird Equipment Limited Employees Pension Plan (C-12574)*, (effective January 1, 1992, October 20, 1993)
- 18) *Union Electric Supply Co. Limited Executive Pension Plan "B" (C-23370)*, (effective January 13, 1993, October 28, 1993)
- 19) *Pension Plan for Controlling Significant Shareholder Employees of Timberlea Packaging Inc. (C-104188)*, (effective August 20, 1991, October 28, 1993)
- 20) *Sound Insight Limited Pension Plan for Executive Employees (C-18819)*, (effective March 31, 1991, October 28, 1993)

Tribunal Activities

This section summarizes matters related to the Pension Commission of Ontario.

1994 Commission Meeting Dates

The Pension Commission will convene on the following Thursdays in 1994:

January 27, February 24, March 24, April 28, May 26, June 23, July 21, August 25, September 22, October 20, November 17 and December 15, 1994.

PCO Board Members

The following members comprise the Commission:

Eileen E. Gillese, Vice Chair
 Darcie L. Beggs
 M. David R. Brown
 Kathryn M. Bush
 Donald G. Collins
 Robert F. Nickerson
 Joyce A. Stephenson
 Monica J. Townson

Hearings Before the Commission

General Motors of Canada Limited - Canadian Hourly-Rate Employees Pension Plan

A decision dated January 25, 1991 with respect to the preliminary hearing on standing held November 1, 1990 was published March 1991, Vol.2, Issue 1. Following a pre-hearing conference January 25, 1991, the hearing on the substantive issues commenced April 8 - 11, 16 - 18, May 30, 31, August 19, 20, October 23 - 25, 1991. On May 20, 1992, the hearing was adjourned sine die.

Stelco Inc. Retirement Plan for Salaried Employees (C-6968)

Decision dated July 7, 1993 (PCOB, Vol. 4, Issue 1, August 1993) ordering the Superintendent to carry out the Proposed Order dated February 28, 1992, that the plan be partially wound up, directed to Stelco Inc. is under appeal. Two pre-hearing conference decisions, July 7 and November 30, 1992 (PCOB, Vol. 3, Issue 2, October 1992), (PCOB, Vol. 3, Issue 4, March 1993) respectively. Decision relating to Neil K. Veinot (PCOB, Vol. 4, Issue 1, August 1993).

Pension Plan for Designated Employees of Tate Access Floors Inc. (C-103686)

The Commission has been requested to review a proposal dated March 31, 1992 by the Superintendent of Pensions to make an Order that the plan be wound up. This matter has been adjourned sine die on consent.

Consolidated GenCorp Canada Inc. Hourly Pension Plan (C-14498)

Consolidated GenCorp Canada Inc. Salaried Pension Plan (C-6895)

GenCorp Canada Inc. requested hearings with respect to a Notice of Proposal to Make an Order on each of the above plans issued by the Superintendent of Pensions March 3, 1993 pursuant to s. 69 of the PBA that the plans be wound up in part effective September 27, 1991. A pre-hearing conference held October 1, 1993 joined the two hearings. Hearing dates to be set. Panel: M.J. Regan, Chair, K. Bush, D. Collins.

Imperial Oil Limited Retirement Plan (C-8884) and Pension Plan for Employees of McColl-Frontenac Inc. (C-4280) (the "Plans")

Counsel for a group of former employees is appealing, under s. 89 of the PBA, the Decisions of the Superintendent of Pensions dated May 7 and 18, 1993 regarding Amendment of August 1991 to Section 4.3 of the Plans. A pre-hearing conference was held October 28, 1993 and adjourned sine die on consent. Panel: E. Gillese, Chair, D. Beggs, D. Collins, R. Nickerson, J. Stephenson.

International Playing Card Company Limited Pension Plan for Bargaining Unit Employees (C-4609)

Application pursuant to ss. 8(2) of Reg. 909, R.R.O. 1990, as amended by O.R. 743/91 for the consent of the Commission to a payment of surplus to International Playing Card Company Limited. This application follows a hearing, before Mr. Justice Carter, adjourned October 21, 1992 until PCO consent is received. Ms. Gillese, presiding member, at the pre-hearing conference July 29, 1993 required further written submissions. Panel: M.J. Regan, Chair, K. Bush, D. Collins, J. Stephenson, M. Townson. Decision pending.

Western Star Trucks Incorporated Pension Plan for Non-Bargaining Employees (C-18086)

Application denied. Decision dated September 21, 1993 published in this issue of the *PCO Bulletin*. The application, heard March 25 and May 27, 1993, requested the consent of the Commission to the payment of surplus on plan wind up to Western Star Trucks Inc.

TIE/communications Canada Inc. Pension Plan for Employees (C-9884)

A pre-hearing conference is scheduled for December 15, 1993, before Ms. K. Bush, presiding member, regarding an application for Commission consent to the payment of surplus on wind up to TIE/communications Canada Inc.

Commission Decisions - Applications Approved Since June, 1993

Applications Approved under s. 8 of Reg. 909, R.R.O. 1990 (as amended by O. Reg. 743/91) and ss. 78(1) of the PBA - Request for Consent to Payment of Surplus Pursuant to a Court Order

At the Commission meeting held July 29, 1993, the Commission consented pursuant to ss. 78(1) of the PBA and clause 8(2) of Reg. 909, to filing with the Court a consent to the payment of plan surplus as follows:

- a) *The Contributory Pension Plan for Salaried Employees of Ivaco Inc. and its Subsidiary Companies and Divisions (C-10765)*

Payment of surplus attributable to the only Quebec member at the date of wind up of the Contributory Pension Plan for Salaried Employees of Ivaco Inc. and its Participating Subsidiary Companies and Divisions, Registration No. C-10765, to Ivaco Inc.

This consent will be filed in the Court pursuant to clause 8(2) of Reg. 909.

At the Commission meeting held September 16, 1993, the Commission consented pursuant to ss. 78(1) of the PBA and ss. 7a(2) of O. Reg. 708/87, as amended by O. Reg. 743/91,

to filing with the court a consent to the payment of plan surplus as follows:

- a) *Pension Plan for Salaried Employees of Chemetron of Canada Limited (C-3117) - Application by Allegheny International Canada Limited*

Payment of surplus to Allegheny International Canada Limited from the Pension Plan for Salaried Employees of Chemetron of Canada Limited, (C-3117), in the amount of \$379,908 as at December 15, 1987 plus investment earnings thereon to the date of payment (estimated to be \$520,459 as at January 31, 1992).

The Commission will file this consent in the Court pursuant to ss. 8(2) of Regulation Reg. 909.

Applications under clause 8(1)(b) of Reg. 909, R.R.O. 1990 (as amended by O. Reg. 743/91) and ss. 78(1) of the PBA - Surplus Withdrawal on Plan Wind Up

At the Commission meeting held June 24, 1993, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990 as amended by O. Reg. 743/91, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- a) *Pension Plan for Employees of TCI-Superior Division Mueller Canada Inc. (C-722) - Application by Tyco Laboratories of Canada Inc.*

Payment of surplus to Tyco Laboratories of Canada Inc. from the Pension Plan for Employees of TCI-Superior Division Mueller Canada Inc., (C-722), in the amount of \$565,858 as at June 30, 1992, which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

- b) *Revised Pension Plan for Employees of G.C. McDonald Supply Limited (C-2404)*

Payment of surplus to G.C. McDonald Supply Limited from the Revised Pension Plan for Employees of G.C. McDonald Supply Limited, (C-2404), in the amount of \$166,095 as at June 7, 1991, which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held July 29, 1993, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O. Reg. 743/91, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) *Pension Plan for the Employees of Morgan Trust Company of Canada (C-21782)- Application by CIBC Trust Corporation*

Payment of surplus to CIBC Trust Corporation from the Pension Plan for the Employees of Morgan Trust Company of Canada, (C-21782), in the amount of \$146,290 as at January 2, 1991 which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhanced benefits pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

b) *Merrill Lynch Canada Inc. Pension Plan Number 15145 (C-100528)*

Payment of surplus in the amount of \$71,671 as at May 29, 1987.

c) *Merrill Lynch Canada Inc. Pension Plan Number 17685 (C-100545)*

Payment of surplus in the amount of \$42,156 as at September 30, 1988.

d) *Merrill Lynch Canada Inc. Pension Plan Number 17871 (C-100546)*

Payment of surplus in the amount of \$64,047 as at September 30, 1988.

e) *Merrill Lynch Canada Inc. Pension Plan Number 19261 (C-100565)*

Payment of surplus in the amount of \$52,976 as at January 31, 1988.

At the Commission meeting held September 16, 1993, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O. Reg. 743/91, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) *The Pension Plan for Senior Executive Employees of Walvik Investments Limited (C-16015)*

Payment of surplus in the amount of \$121,400 as at December 1, 1992.

b) *World Vision Canada Pension Plan for W.J. Newell (C-101896)*

Payment of surplus in the amount of \$27,895 as at September 1, 1990.

c) *Staff Pension Plan for Employees of Paul Sadlon Motors Incorporated (C-15891)*

Payment of surplus in the amount of \$22,869 as at November 30, 1990 which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held October 28, 1993, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O. Reg. 743/91, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) *Pension Plan "A" for Executive Employees of Dewar Insulations Inc. (C-16335)*

Payment of surplus in the amount of \$97,825 as at February 1, 1990.

Application Approved under ss. 78(1), PBA & clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O. Reg. 743/91 and Request for Refund of Employee Contributions - ss.63(7) & (8) of the PBA

At the Commission meeting held June 24, 1993, the Commission consented pursuant to ss. 78(1) of the PBA & clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O. Reg. 743/91 and ss. 63(7) and (8) of the PBA to the following:

a) *Hartz Canada Inc. Pension Plan for Salaried Employees (C-13909)*

1. pursuant to ss. 63(7) & (8) of the PBA to the refund of members' and former members' required contributions from the Hartz Canada Inc. Pension Plan for Salaried Employees, (C-13909), as at March 31, 1993 plus credited interest thereon to the date of payment, for members and former members with contributory benefits, in accordance with the surplus sharing agreement.
2. pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended by O. Reg. 743/91, to a payment of surplus to Hartz Canada Inc. from the Hartz Canada Inc. Pension Plan for Salaried Employees, (C-13909), in the amount of \$4,398,462 as at March 31, 1993 plus investment earnings thereon to the date of payment, which consent shall not be effective until the administra-

tor satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Applications Approved under ss. 63(7) & (8) of the PBA - Return of Member Contributions

At the Commission meeting held June 24, 1993, the Commission consented pursuant to ss. 63(7) & (8) of the PBA to the refund of member required contributions as follows:

- a) *Pension Plan for Executive Employees of Regal Greetings & Gifts (C-11186) - Application by Federal Industries Consumer Group Inc.*

Refund of members' required contributions for Members from the Pension Plan for Executive Employees of Regal Greetings & Gifts, (C-11186), in the aggregate amount of \$91,200 as at December 31, 1990 plus credited interest thereon to the date of payment.

At the Commission meeting held July 29, 1993, the Commission consented pursuant to ss. 63(7) & (8) of the PBA to the refund of member required contributions as follows:

- a) *Pension Plan for the Employees of Distican Inc. (C-17916)*

Refund of certain senior executives (Class 1) members' required contributions in the amount of \$87,814 as at December 31, 1991 plus credited interest thereon to the date of payment.

At the Commission meeting held September 16, 1993, the Commission consented pursuant to ss. 63(7) & (8) of the PBA to the refund of member required contributions as follows:

- a) *Nelson Aggregate Co. Salaried Employees' Pension Plan (C-18241)*

Refund of \$49,551.51 as at January 1, 1993 plus investment earnings thereon to the date of payment.

- b) *EM Plastic & Electric Products Limited Employees' Pension Plan (C-15052)*

Refund in an amount equal to the surplus allocated to these members and former members.

- c) *The Pension Plan for The Society of Management Accountants of Ontario (C-104417)*

Refund of \$308,300 as at January 1, 1992 plus credited interest to the date of payment.

- d) *Revised Pension Plan for Employees of Swenson and Son Limited (C-7372)*

Refund of \$42,323 as at February 28, 1991 plus credited interest to the date of payment.

Application Approved under ss. 78(4) of the PBA - Return of Employer Payments or Overpayments

At the Commission meeting held July 29, 1993, the Commission consented pursuant to ss. 78(4) of the PBA to the following:

- a) *Pension Plan for the Employees of E.R. Carpenter of Canada Limited (C-101781)*

Refund of an overpayment of contributions in the amount of \$128,173.86 to E.R. Carpenter of Canada Limited from the Pension Plan for the Employees of E.R. Carpenter of Canada Limited, (C-101781).

Applications Approved under s. 105 and ss. 78(4) of the PBA - Extension of Time and Return of Overpayment

At the Commission meeting held September 16, 1993, the Commission consented to an extension of time for filing an application and to the refund of an overpayment as follows.

- a) *Pension Plan for Cooksville Plant Employees of Primeau Argo Block (C-101298) - Application by ESSROC Canada Inc. (formerly Lake Ontario Cement Limited)*

- i) pursuant to s. 105 of the PBA, to extend the time limit for filing an application for the refund of an overpayment in the amount of \$7,404.11; and

- ii) pursuant to ss. 78(4) of the PBA, to the refund of an overpayment in the amount of \$7,404.11 to ESSROC Canada Inc. (formerly Lake Ontario Cement Limited) from the Pension Plan for Cooksville Plant Employees of Primeau Argo Block, (C-101298).

- b) *Pension Plan for Transport Division Hourly Employees of Primeau Argo Block (C-101300) - Application by ESSROC Canada Inc. (formerly Lake Ontario Cement Limited)*

- i) pursuant to s. 105 of the PBA, to extend the time limit for filing an application for the refund of an overpayment in the amount of \$3,195.18; and

- ii) pursuant to ss. 78(4) of the PBA, to the refund of an overpayment in the amount of \$3,195.18 to ESSROC Canada Inc. (formerly Lake Ontario Cement Limited) from the Pension Plan for Transport Division Hourly Employees of Primeau Argo Block, (C-101300).

Pension Benefits Guarantee Fund ("PBGF")

On July 29, 1993, the Commission, pursuant to ss. 90(1) of the PBA, issued Notices of Proposal to make a Declaration pursuant to s. 83(1) of the PBA that the PBGF applies to the following pension plans:

- a) *Pension Plan for Supervisory and Staff Personnel of Hiawathaland Hotels Limited (C-14720)*
- b) *Pension Plan for Local Union 412, Hotel and Restaurants Employees and Bartenders International Union (C-14721) - Re: Hiawathaland Hotels Limited*
- c) *Pension Plan for Hourly Rated Employees of Jaeger Canada Equipment Ltd. (C-15969)*
- d) *The Pension Plan of Union Drawn Steel Company Limited Effective September 1, 1955 (C-5905)*

On July 29, 1993, the Commission, pursuant to ss. 83(1) of the PBA, declared that the PBGF applies to the following pension plans:

- a) *The Welles Corporation Limited C.A.W. Pension Plan (C-100807)*
- b) *Pension Plan (A) for Full-Time Salaried Employees Exclusive of Those Employees Who are Members of a Bargaining Unit of Libbey-St. Clair Limited (C-15118)*
- c) *Pension Plan (C) for Full-Time Hourly Employees Inclusive of Those Salaried Employees Who are Members of a Bargaining Unit of Libbey-St. Clair Limited (C-15119)*

On July 29, 1993, the Commission, pursuant to ss. 34(7) of Reg. 909 under the PBA, authorized an interim allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for pensions determined under s. 34 of the Reg. Any money not required to provide such benefits shall be returned to the PBGF.

- a) *Pension Plan (A) for Full-Time Salaried Employees Exclusive of Those Employees Who are Members of a Bargaining Unit of Libbey-St. Clair Limited (C-15118)*
 - (a) payments not to exceed a total of \$20,000 in respect of
 - (i) pensions provided under the Pension Plan for the period from April 12, 1993 to July 29, 1993, and
 - (ii) pensions provided to members or former members for the period, if any, between the date each was eligible to receive a pension and the date on which each elected to begin receiving a pension; and,

(b) monthly payments not to exceed \$5,000.

- b) *Pension Plan (C) for Full-Time Hourly Employees Inclusive of Those Salaried Employees Who are Members of a Bargaining Unit of Libbey-St. Clair Limited (C-15119)*

(1) payments not to exceed a total of \$200,000 in respect of

- (i) pensions provided under the Pension Plan for the period from April 12, 1993 to July 29, 1993, and
- (ii) pensions provided to members or former members for the period, if any, between the date each was eligible to receive a pension and the date on which each elected to begin receiving a pension; and,

(b) monthly payments not to exceed \$60,000.

On September 16, 1993, the Commission, pursuant to ss. 90(1) of the PBA, issued a Notice of Proposal to Make a Declaration pursuant to s. 83 of the PBA that the PBGF applies to the following pension plan:

- a) *Sound Insight Limited Pension Plan for Executive Employees (C-18819)*

On September 16, 1993, the Commission, pursuant to ss. 83(1) of the PBA, declared that the PBGF applies to the following pension plans:

- a) *The Pension Plan of Union Drawn Steel Company Limited Effective September 1, 1955 (C-5905)*
- b) *Pension Plan for Hourly Rated Employees of Jaeger Canada Equipment Ltd. (C-15969)*
- c) *Pension Plan for Supervisory and Staff Personnel of Hiawathaland Hotels Limited (C-14720)*
- d) *Pension Plan for Local Union 412, Hotel and Restaurants Employees and Bartenders International Union (C-14721) - Re: Hiawathaland Hotels Limited*

On September 16, 1993, the Commission, pursuant to ss. 34(7) of Reg. 909 under the PBA, allocated from the PBGF the amount of (identified below in brackets) plus interest at the rate of 9% from March 31, 1993 to the date of payment to be paid to the following plans:

- a) *Pension Plan for Supervisory and Staff Personnel of Hiawathaland Hotels Limited (C-14720) (\$14,514)*
- b) *Pension Plan for Local Union 412, Hotel and Restaurants Employees and Bartenders International Union (C-14721) - Re: Hiawathaland Hotels Limited (\$59,822)*

Decisions

IN THE MATTER OF an Application by Western Star Trucks Inc. to the Pension Commission of Ontario for payment of surplus funds on plan wind up of Western Star Trucks Inc. Pension Plan for Non-bargaining Employees, Ontario registration number C-18086

Heard: March 25, 1993 and May 27, 1993
Toronto, Ontario

Before: M. Joseph Regan, Chair
Eileen E. Gillese, Vice Chair
Darcie L. Beggs
M. David R. Brown
Monica J. Townson

Reasons for Decision

Nature of the Application

Western Star Trucks Inc. ("the Applicant") applied to the Pension Commission of Ontario ("the Commission") for consent to a payment to it of surplus funds arising on the wind up of Western Star Trucks Inc. Pension Plan for Non-Bargaining Employees, Ontario registration no. C-18086 ("the Plan").

The Applicant sought payment of surplus funds in the amount of \$2,761,200, as at June 30, 1992, out of a total surplus of \$3,651,000, as at June 30, 1992, plus investment earnings thereon to the date of payment. The balance of the surplus funds is to be used for benefit enhancement for Plan members and former members.

This application was brought pursuant to subsections 78 (1) and (2) and clause 79(3)(b) of the Pension Benefits Act, R.S.O. 1990 ("the Act") and clause 8(1)(b) and subs. 25 (1) of Reg. 909, R.R.O., 1990, as amended ("the Regulations"). (Clause 8(1)(b) was formerly s. 7a(1)(b) of regulation 708/87.) For ease of reference, those legislative provisions are set out now.

78. (1) No money may be paid out of a pension fund to the employer without the prior consent of the Commission.
- (2) An employer who applies to the Commission for consent to payment of money that is surplus to the employer out of a pension fund shall transmit notice of the application, containing the prescribed information, to, ...
79. (3) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless, ...
- (b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan; ...
8. (1) No payment may be made from surplus out of a pension plan that is being wound up in whole or in part unless, ...
- (b) the payment is to be made to an employer with the written agreement of,
- (i) the employer,
- (ii) the collective bargaining agent of the plan or, if there is no collective bargaining agent, at least two-thirds of the members of the plan, and
- (iii) such number of former members and other persons who are entitled to payments under the pension plan on the date of the wind up as the Commission considers appropriate in the circumstances.

25. (1) The following information is prescribed for the purposes of a notice respecting an application under subsection 78(2) of the Act: ...
 3. The surplus attributable to employee and employer contributions...
 6. The contractual authority for surplus withdrawals...

When the hearing commenced on March 25, 1993, the following numbers of consents to the application had been received.

	No. of Notices Issued	No. of Consents
Active Members	159	151 (95%)
Former Members: Pensioners & Deferreds	165	123 (75%)

However, between the first and second day of hearing, at least 17 Plan members wrote to the Commission to withdraw their consents. Of the 17, 16 were deferreds and one was an active plan member. As can be seen by the fact that the consents are given by individuals and not by a collective bargaining agent, there is no union acting on behalf of the employees. Those members opposing the application were unrepresented by counsel but a number were present and took part in the hearing.

History and Background of the Plan

In this section, the relevant aspects of the Plan history will be outlined. However, two points should be made at the outset. First, the Plan has a very tortuous corporate existence because it, and its predecessors, have been through a series of amalgamations, separations and conversions. Second, we understand from the Applicant that it was unable to locate complete documentation for the Plan and, as a result, the Commission had to decide this matter without the benefit of a complete set of Plan documentation.

1. Plan C-2399

Western Star Trucks employees were originally part of the White Trucks, a division of White Motor Corp. of Canada Retirement Plan, Quebec registration No. C- 2399, ("Plan C-2399").

Plan C-2399 was established in November of 1951 and was funded by group annuity policy G.P. 579 with Confederation Life. That policy was surrendered on April 1, 1966 and the value of the annuity was transferred to deposit administration policy G.P. 72088, also with Confederation Life.

The relevant provisions in respect of surplus entitlement, as contained in the April 1, 1966 text of Plan C-2399, are as follows.

- s. 20.02 The Company intends that this shall be a permanent Plan for the exclusive benefit of its Members...
- s. 21.2 Upon the termination of the Plan ... the Plan Administrator ... shall provide for an equitable allocation of the funds solely to the Members, remaining in the Plan at the date of termination.

2. Plan C-877

Effective January 1, 1975, the assets and liabilities in respect of White Trucks, a division of White Motor Corporation of Canada, were transferred from Plan C-2399 to the Cockshutt Farm Equipment of Canada Limited Pension Plan, Ontario registration No. C-877 ("the Cockshutt Plan C-877"). Apparently, there were a number of other amalgamations or transfers or the like to Plan C-2399 between 1966 and 1975 but there is no reliable information available on the same.

Also effective January 1, 1975, the assets and liabilities of the White Western Star Division Pension Plan were transferred to the Cockshutt Plan C-877. The White Western Star Division Pension Plan had not been registered with any provincial pension body as the members were employed in British Columbia.

There is no pension plan documentation available for the White Western Star Division Pension Plan. The known relevant surplus provisions for Plan C- 2399 are set out in the immediately preceding section.

At the time of the transfer of assets and liabilities from the two plans to the Cockshutt Plan C-877, there was in effect a February 1962 plan text for the Cockshutt Plan C-877. The plan text contained no express provisions respecting entitlement to surplus on plan wind up. There were, however, the following provisions.

- s. 6.3 The Employer shall have no right, title or interest in the contributions made by it to the Trustee and no part of the Fund shall revert to the Employer.
- s. 7.1 The Employer reserves the right to amend or terminate this Plan at any time. The withdrawal or elimination of some (but not all) employees from the Plan shall not constitute a termination of the Plan, which shall continue to exist for the benefit of other employees remaining in or subsequently brought under the Plan ...

After receiving the transfers from Plan C-2399 and the White Western Star Division Pension Plan, the Cockshutt Plan C-877 changed its name to White Motor Corporation of Canada Limited's Pension Plan for Salaried and Hourly Non-Bargaining Employees, Ontario registration No. C-877 ("Plan C-877").

The pension plan text for Plan C-877, which was effective January 1, 1975, provided that:

- s. 15.06 If the Plan, as the same relates to the employees of an Employer, should be terminated, any assets attributable to Employer contributions on behalf of said employees remaining after the satisfaction of all liabilities of the plan to the participants and members of said employer and their beneficiaries shall be distributed to said employer.
- s. 19.03 Except as provided in Section 15.05, under no circumstances shall any funds contributed to the Trust Fund or any assets of the Trust Fund ever revert to, or be used or enjoyed by, the Employer nor shall any funds or assets ever be used other than for the benefit of Participants, members or their beneficiaries.

It would appear that the reference in s.19.03 to s.15.05 is a patent error and ought to be read as referring to s.15.06.

3. Plan C-18086

A number of complicated changes took place in respect of the structure of the corporation between 1975 and 1981, which changes do not need to be recounted here. In 1981, the Plan was established as Plan C-18086; it assumed the assets and liabilities in respect of the truck division members transferred from Plan C-877.

The relevant surplus entitlement provisions for the Plan (i.e. Plan C-18086), at its inception in 1981, were as follows.

- s. 14.01 The Company expressly reserves the right to amend the Plan, provided, however, that no amendment shall diminish or adversely affect any accrued interest of [sic] benefit of Participants or Members or their Beneficiaries. A permitted amendment shall become effective subject to approval of applicable pension benefits legislation as of the effective date designated by the amendment.
- s. 15.06 If the Plan, as the same relates to the employees of the Employer, should be terminated, any assets attributable to Employer contributions on behalf of said employees remaining after the satisfaction of all liabilities of the Plan to the Participants and Members of said Employer and their Beneficiaries shall be distributed to said Employer.
- s. 19.01 The Plan and Trust are created for the exclusive benefit of the employees of the Employer and their Beneficiaries.
- s. 19.03 Except as provided by Section 15.06, under no circumstances shall any funds contributed to the trust fund or any assets of the trust fund ever revert to, or be used or enjoyed by, the employer nor shall any funds or assets ever be used other than for the benefit of participants, members or their beneficiaries.

The text of the Plan was revised and restated January 1, 1985.

The following provisions are relevant.

- s. 13.08 If the Plan, as the same relates to the Employees of the Employer or of an Associated Company, should be terminated, any assets remaining after satisfaction of all liabilities of the Plan to Members of the Employer or an Associated Company and their Beneficiaries shall be distributed to the Employer or to the Associated Company.
- s. 14.01 The Company expressly reserves the right to amend the plan, provided, however, that no amendment shall diminish or adversely affect any accrued interest or [sic] benefit of Participant or Members or their Beneficiaries unless such amendment is required in order to comply with the requirements of a governmental authority having jurisdiction over the Plan. A permitted amendment shall become effective subject to approval of applicable pension benefits and taxation legislation as of the effective date designated by the amendment.
- s. 15.01 The Plan and Trust are created for the exclusive benefit of Members and their Beneficiaries.
- s. 15.03 Subject to the prior approval of the appropriate pension supervisory authority or authorities the Employer may receive a refund of surplus assets of the Trust Fund.

Plan C-18086, as amended and restated effective January 1, 1988, provides that surplus should revert to the Applicant on Plan wind up.

- s.14.08 If the Plan should be terminated, any assets remaining after the satisfaction of all liabilities for benefits promised under the terms of the Plan belong to the employer and shall be distributed to the Employer.

4. Relevant Financial History

The Commission had very incomplete financial information. The information we had is set out as it is relevant both to the Plan's history and, as will be seen, to the resolution of the legal issues that arise in the Application.

An actuarial valuation of Plan C-2399 as at January 1, 1974 on an on-going basis, revealed that Plan C-2399 had an actuarial surplus of \$305,408 on assets of \$2.66 million. It is unclear whether surplus assets were transferred from Plan C-2399 to the Cockshutt Plan C-877; it is the Applicant's contention that only sufficient assets to cover liabilities were transferred.

The Applicant took contribution holidays in the years 1966 - 1970 inclusive and 1971- 1974 inclusive in respect of Plan C-2399.

According to the first actuarial valuation filed with the Pension Commission of Ontario for the Plan (i.e. Plan C-18086), the Plan had an unfunded going concern liability of \$80,400 on assets of \$7,535,000 as at January 1, 1982. It is unknown whether an actuarial valuation on a wind up basis would have shown a surplus.

Between the time of the Plan's inception in 1981 and the effective date of wind up of June 30, 1992, the Applicant took contribution holidays in all years but two, those years being 1982 and 1987. In 1982, the Applicant made an employer contribution of \$265,400 and we understand that an employer contribution of \$186,000 was made in 1987, for a total employer contribution of \$451,400. The Annual Information Return for 1987 was returned with no figures in the "employer contribution" line. The figure of \$186,000 was inserted by the staff of the Commission with the notation of "as per telephone conversation". Whether the employer contribution in 1987 was made does not need to be resolved in light of the conclusions we reach on the main issues.

The surplus used for contribution holidays in the same time period (i.e. 1981 - 1992) was \$2,654,956. The employees contributions over the same time period amounted to \$1,735,199.

In 1985 the Applicant withdrew surplus in the amount of \$2,813,000 from the Plan. At that time, the actuary estimated that 20.9% of the surplus was related to employee contributions.

We have no information as to payments out of the Plan over the period 1981 - 1992.

The Issues

The Act precludes the Commission from consenting to the application unless the conditions contained in clauses (a) through (d) of subsection 79(3) have been met. In legal terms, the requirements contained in each of the clauses in

subsection 79(3) are statutory preconditions that must be met before the Commission is entitled to give its approval to surplus withdrawal applications. It is up to the Applicant to demonstrate to the Commission that each of those statutory preconditions has been met.

The Commission is satisfied that clauses (a) and (c) of subs. 79 (3) have been met. At issue is whether clauses (b) and (d) have been met. As our decision turns primarily on whether the Applicant has satisfied clause 79(3)(d), we will deal with that issue first.

Issue #1 Has the Applicant met the requirements of clause 79(3)(d)?

Clause 79(3)(d) of the Act, set out above in the first part of our reasons for decision, requires the Applicant to have complied with “all other requirements prescribed” under the Act. The only matter to be decided by the Commission in determining whether the Applicant satisfies clause 79(3)(d) is whether the notice transmitted by the Applicant, as required by subsection 78(2) of the Act, was adequate.

Subsection 78(2) requires an employer making application to the Commission for withdrawal of surplus pension funds to transmit notice of the application to specified individuals and groups. The notice that the Applicant transmitted in accordance with subsection 78(2) was defective in two ways. First, the notice failed to meet the surplus attribution requirement contained in subs. 25(1) of the Regulations; second, although the notice disclosed the existence of Plan C-2399, it did not disclose the terms of the surplus entitlement provisions therein.

The Applicant argues that, for a variety of reasons, both defects ought to be excused. The first argument can be generally termed the “fairness” argument. In accordance with subs. 25(2) of the Regulations, the Applicant submitted a copy of the notice to the Superintendent of Pensions for the Province of Ontario (“the Superintendent”) before it was transmitted. The Superintendent advised the Applicant that the notice was acceptable. The Applicant’s position is that it relied upon the Superintendent’s advice and for the Commission to now find the notice defective so that it would have to recommence the application process would be unfair; in effect, the argument is that the Commission is estopped from denying the validity of the notice in light of the Superintendent’s advice and the reliance of the Applicant thereon.

We cannot accept this argument. Estoppel does not lie against the Crown, including a tribunal such as the Commission. The Commission cannot simply accept that the notice is valid because the Superintendent said so at a different, far earlier point in the proceedings. It must go on and find, for itself, that the notice and all other legislated requirements have been met. To do otherwise would be in breach of the Commission’s obligations under subs. 79(3).

Because this fairness argument has been made by others in recent months, we will take this opportunity to elaborate. Obviously, the Commission does not want to cause uncertainty in proceedings before it nor does it wish to cause pension funds or employers to incur needless expense; it would not lightly find a notice to be invalid which the Superintendent had advised was adequate. However, it is clear that subs. 79(3) requires the Commission to independently assess the validity of the notice.

A functional approach leads to the same conclusion. The Superintendent is merely required, by subs. 25(2) of the Regulations, to advise, at a preliminary stage of the proceedings, as to the adequacy of the notice. The Commission, on the other hand, makes a final decision based in part on the validity of the notice and it makes the determination at the end of the proceedings which often have revealed much information that was unknown at the time the notice was provided to the Superintendent.

Moreover, the Commission’s role in respect of surplus withdrawal applications is that of a fiduciary. The Commission must independently determine whether the Applicant has satisfied all of the requirements of the legislation and if the Commission comes to the view that the notice is not adequate, knowing that adequate notice is a legislated requirement, it cannot consent to such an application. Obviously, we would not lightly come to such a view. But we cannot accept that we are not to even undertake such a review because of “unfairness”. We must discharge all our fiduciary obligations including a determination that proper notice was given. Thus, we must determine whether the two defects in the notice in this application are such that they invalidate the notice.

Subs. 25(1) of the Regulations is clear: it requires a notice transmitted pursuant to subs. 78(2) of the Act to set out the surplus attributable to employee and employer contributions. The notice did not do this. Instead, it contains the following assertion:

“There is no standard actuarial method of calculating the amount of surplus attributable to employee and employer contributions. In particular, this Pension Plan has been through a series of amalgamation, separations and conversions since inception. In addition, for part of the period the Plan was funded through an insured

group annuity contract. The financial data and impact of each of these transactions and changes is not available to permit a calculation of surplus allocation to employee contributions.”

Let us accept, for the moment, the assertion that it was not possible to provide a surplus attribution on the notice because of inadequate and incomplete information. Can the Commission accept, as valid, a notice which does not meet the explicit requirements of the Regulations? No, it cannot. The Commission is a creature of statute. Impossibility is something a court can deal with by declaring a regulation or part thereof invalid; the Commission has no such powers. Nor should it. It is obvious that if employees think that a large proportion of the surplus in a plan is attributable to their contributions they may act differently than if they think that little of their money has gone towards creation of the surplus. Surplus attribution is a very important part of the notice; to omit it is to strike at the substance of the notice and not merely to omit some procedural nicety. A notice which does not give surplus attribution information is materially defective and in breach of the Regulations. That defect alone precludes us from approving the application.

But we wish to comment further. We are very troubled by the assertion that because no “standard” actuarial method of calculating surplus attribution exists, no information on surplus attribution was given. Is the fact that there is no “standard” actuarial method an excuse for failing to meet the requirements of the regulation? Subs. 25(1) does not stipulate that a “standard” method be used but only that attribution be given. Could not the actuary have used a “reasonable” method instead? Surely there are ways to give some information that would meet the spirit of the legislative requirement and not cause an actuary to breach his or her professional standards. Would this information on the notice have made a difference to the number of consents obtained by the Applicant?

Thankfully, the Commission need not answer questions such as those. The notice is a statutory precondition to the exercise of our powers under subs. 79(3); it is defective in a material way and we cannot approve the application.

We would add that we find the notice to be defective in another way, that being a failure to disclose the surplus entitlement provisions of Plan C-2399, which provisions appear to give clear entitlement to surplus to the plan members. Both subs. 25(1)(6) of the Regulations and the common law require that the notice contain all material information. That provision appears to be material but is missing.

In recognition of this defect, the Applicant did offer to provide all the additional information in a new notice and the notice would state that the recipient of the notice could revoke his/her previous consent. In light of the other problems with the notice, that is not an acceptable alternative. A new and complete notice would be required before we could find that the requirements of subs. 79(3)(d) have been met. Only such proper notice will enable us to accept that the consents obtained pursuant to s.8 of the Regulations were valid.

Issue #2 Has the Applicant met the requirements of clause 79(3)(b)?

As can be seen above in “History and Background of the Plan, Part 3, Plan C- 18086”, s. 14.08 provides for reversion of surplus to the Applicant on Plan wind up. The Applicant argues that the Commission is to consider only s. 14.08 and that therefore it meets the requirements of clause 79(3)(b). That is, the Applicant would have the Commission rely on the current Plan text alone and not engage in a review of the complete plan documentation to ensure that the current plan provisions are valid. It argues that the Commission is either actually limited to an examination of the most current Plan provisions in determining whether the requirements of clause 79(3)(b) have been met or that the Commission ought to so limit its examination.

If we accept the Applicant’s position, then it is clear that it has met the requirements of clause 79(3)(b). However, we do not accept the Applicant’s contention.

The Applicant’s position is founded on two arguments. First, it says that the case of Otis Canada Inc. v. Superintendent of Pensions for Ontario, (1991) 2 O.R.(3d) 737 (Ont. Court, General Division) limits the Commission to an examination of current plan documentation alone. Second, the Applicant submits that the whole scheme of s.8(1)(b) of the Regulations is to encourage settlement of disputes regarding surplus ownership without the need for recourse to the courts for determinations based on narrow and technical grounds. Just as the Commission cannot second guess a court determination of ownership, so the argument runs, it ought not to second guess the “informed decision of members obtained by the means prescribed by the legislation as a substitute for a court order.”

The Commission does not feel bound by the words of Madam Justice Corbett in the Otis case for the following reasons. The Otis case says that the Commission is to refer to the most current plan provisions only “in the first instance”. If those words are to have any meaning, it must be that if anything suggests to the Commission that the most current plan provisions may not be valid then the Commission is to look behind them. Thus, the Otis case does not bar the Commission from looking behind current plan provisions to truly determine whether the “pension plan provides for payment of surplus to the employer”.

In any event, there are a number of cases that have been decided in the Ontario Court, General Division which affirm that the courts look to the Commission to perform a thorough analysis of plan documentation when determining whether subsection 79(3)(b) has been met. See, for example, *Sherwood Communications Group Ltd. v. The Canada Trust Co.* (1992), 33 A.C.W.S. (3d) 1152 and other such cases in which applications for declarations as to surplus entitlement before the court have been adjourned so that the Commission can first make such a determination. With this diversity of view at the same level of court, it cannot be said that the Commission is bound to follow the view that would bar us from considering anything but the most current plan provisions.

The fiduciary nature of the Commission's role also makes it incumbent upon the Commission to look behind the current Plan text if there is any question as to the validity of the current provisions. To do otherwise would be to fail in its obligations to protect the interests of all parties to the pension plan.

Finally, the Commission is the body in the province with expertise in pension matters and to skirt these types of issues would be an abrogation of the function invested in it by the legislation. It is not only the pension community but indeed the courts which are entitled to look to the Commission for a proper fulfilment of its functions.

We turn to the second of the Applicant's arguments on this point. If sufficient numbers of members and former members in categories 8(1)(b)(i) and (ii) consent, can/should/must the Commission change the way in which it deals with clause 79(3)(b)? That is, instead of tracking through the plan documentation to ensure that the current plan provisions are valid, should the Commission accept that such provisions are valid on the basis that those consenting to the application are content with the provisions?

The answer to this argument is simple. The passage of s. 8 of the Regulations cannot change the requirements of the Act. Subsection 79(3) is still in place. Therefore, the Commission must still ensure that clause 79(3)(b) has been met and that the provisions in the Plan providing for surplus reversion to the Applicant are valid. That said, the degree of scrutiny given to plan documentation changes with each case. In this case, there is a dispute, the dissident employees have no legal representation, there is no union representing plan members and there is a failure to meet the requirements of the legislation in respect of the notice. The Commission, in such circumstances, must be more stringent in its review than it would be if there were no dispute or if the members were represented.

Thus, we turn to a consideration of whether the Plan, considered in its entirety, provides for surplus reversion to the Applicant. In effect, we must determine whether s. 14.08 of the current plan text is valid. In light of our findings that the notice is invalid and the application must fail for that reason, we technically do not have to deal with this issue. However, in fairness to the Applicant, we wish to draw to its attention the difficulties we find with the validity of s. 14.08 so that the Applicant is not left with the mistaken impression that issuance of an appropriately worded new notice followed by collection of an adequate number of consents will virtually automatically lead to a successful application.

The Applicant asks that we treat the Plan as being established in 1981 despite there being a transfer of assets and liabilities from Plan C-877 to the Plan and despite the fact that employees covered by Plan C-877 were transferred to the Plan for coverage. The Applicant's view is that the plans that ante-date 1981 are irrelevant because the funds that were transferred cannot be traced. The funds cannot be traced, it is argued, because there was an actuarial deficit shortly after the inception of the Plan.

We do not accept that the Plan was effectively begun in 1981. It matters not whether the assets are traceable or whether the Plan was in a deficit position at the time of its inception. The Plan covered employees that had been covered by the predecessor plan C- 877, therefore the Plan was a successor plan and its terms have to be seen to carry on from the predecessor plans which fed into it. This view is borne out by the successor employer provisions in s. 81 of the Act and the equivalent provisions in the predecessor legislation.

We turn therefore to a consideration of the plan texts that antedate the Plan. Section 15.06 of Plan C-877 purports to allow assets attributable to employer contributions not used for the satisfaction of liabilities to revert on plan termination. But it is not clear that s.15.06 is valid given the terms of the three plans which were merged to create it. S. 6.3 of the Cockshutt Plan C-877 stipulated that the employer was to have no interest in the fund whatsoever; Plan C-2399 contained "exclusive benefit" language in favour of the plan members and there is no information about the terms of the White Western Star Division Pension Plan.

Even if s. 15.06 of Plan C-877 is valid, s. 19.03 of Plan C-877 may have barred the employer from amending the plan to create the amending provision in s. 14.01 in the 1981 version of the Plan. S. 14.01 is crucial to the Applicant's right to surplus as it is s.14.01 which is relied upon by the Applicant as empowering it to amend the Plan to provide for surplus reversion.

S. 19.03 of Plan C-877 effectively gives to the employees all beneficial entitlement except surplus attributable to employer contributions not used for satisfaction of liabilities. That is, the "accrued" limit introduced in the amending power in s. 14.01 of the 1981 plan

text evaporates. The strict terms of s.19.03 would bar then the later amendments purporting to give surplus reversion to the employer. The result would be that the Applicant is only entitled to surplus assets attributable to its contributions which are not used to satisfy liabilities.

If s. 19.03 did so operate, according to s.15.06 of Plan C-877 the Applicant could be entitled to no more than the surplus attributable to its contributions that were not used for the satisfaction of plan liabilities. This raises two further questions. First, was the Applicant's withdrawal of surplus in 1985 valid? Second, what happens in light of the actuary's statement that it is impossible to determine the respective contributions of the Applicant and the plan members? Is it not an essential precondition to recovery of any surplus funds that the Applicant prove what its contributions were and what portion of the contributions had been used for satisfaction of the plan liabilities?

We do not fully decide these complicated issues but are content to raise the questions that must be addressed if and when the issues must be decided.

Even assuming, however, that the Applicant is correct and 1981 is the start date of the plan, it is doubtful that surplus entitlement lies fully with the Applicant. The relevant plan provisions in the 1981 text are s. 14.01 and s. 15.06. S. 14.01 gives the employer a unilateral right to amend the plan provided that "no such amendment shall adversely affect any accrued interest or benefit" of Plan members. S. 15.06 says that after satisfaction of all liabilities, "any assets attributable to Employer contributions" shall be distributed to the Employer. By implication and in light of s.19.01 giving exclusive benefit of the Plan to the plan members, the plan beneficiaries are entitled to all other surplus on termination. The Applicant would be limited by the terms of the 1981 Plan text to surplus attributable to its contributions that was not needed for plan liabilities.

The Plan was revised and restated in 1985 resulting in the insertion of s.13.08 which, it will be recalled, provides that any surplus assets on termination are to go to the employer.

The question is whether s.13.08 could be inserted into the Plan in light of s.14.01. The amendment which led to s.13.08 had the apparent effect of taking away the employees' previous rights to all surplus other than that attributable to employer contributions. The amending power in s. 14.01 of the 1981 Plan precludes any amendment which "diminishes or adversely affects any accrued interest or benefit". The meaning of the phrase "any accrued interest or benefit" is unclear. On a variety of constructions, it is possible to conclude that the limitation on the amendment power precluded the insertion of s.13.08. For example, the word "interest", even as modified by the word "accrued" may be broad enough to cover the right to surplus on plan termination.

Another possible construction depends upon whether the word "accrued" modifies both "interest" and "benefit". One could argue both ways. A plain reading of the phrase would leave the word "benefit" unrestricted by the word "accrued". On that reading, removing or reducing the employees right to surplus on wind up amounts to an adverse affect on its benefits and is invalid.

The Applicant argues that the word "accrued" is to modify both "interest" and "benefit" and because the right to surplus would only arise on termination, the employees right was not "accrued". It may be that the narrow meaning is the better interpretation but even then, on the facts before us, the Applicant is in a difficult position. Remember, the Applicant withdrew close to \$3.0 million of surplus in 1985, that being the same time as the purported amendment took place. Thus, the Plan must have been in surplus in 1985 so can the Applicant now be heard to say that surplus had not "accrued"? The act of withdrawing surplus may, in effect, have crystallized the surplus and if the employees were entitled to surplus it may be correct to see them as having as "accrued" right at that time.

On this view, the 1985 amendment is invalid to the extent there was surplus at the time the amendment was made and to the extent it can be said that the interest of the plan members in existing surplus at 1985 was "accrued".

Again, we are in the difficult position of having had only one side of this issue argued as the dissident plan members were unrepresented. As we do not have to decide this issue to come to a determination under subs. 79(3), we decline to so do but alert the Applicant to the problems we see with its position on this particular matter.

Conclusion

As the Applicant has failed to meet the requirements of clause 79(3)(d) and has not clearly met the requirements of clause 79(3)(b) of the Act, its application is denied.

DATED AT TORONTO, ONTARIO this 21st Day of September, 1993.

M. Joseph Regan, Chair, Eileen E. Gillese, Vice Chair, Darcie L. Beggs, M. David R. Brown, Monica J. Townson

Contacts For PCO Enquiries

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Communications - including Publications and BBS	Judith Chalmers	314-0699
Issues and Correspondence - including Freedom of Information Requests and Media Enquiries	Margaret Dougherty	314-0697
General Enquiries/Forms		314-0660
Mailing List Update and Requests for Publications	Linda Stangl	314-0694
Policy Issues (Bilingual)	Susan Ellis Cynthia James Jules Huot	314-0703 314-0702 314-0613
Pension Benefits Guarantee Fund Assessment (Payment)	George Ha	314-0676
Registrar/Secretary to the Commission	Mary Crocker	314-0624

Contacts For Plan Related Enquiries

1. SECTOR ALLOCATIONS - (At least one plan with 250 or more members)

Sectors	Pension Officer		Alternate	
Agriculture, Mining, Construction, Finance...	Rosemine Jiwa-Jutha	314-0611	Wynnell De Landro	314-0603
Trade, Commercial, Public Administration	Larry Falconer	314-0610	Penny McIlraith	314-0594
Food, Beverages, Textiles Paper...	Jaan Pringi	314-0586	Sandy Malloy	314-0636

Contacts For Plan Related Enquiries**1. Sector Allocations - (At least one plan with 250 or more members) (cont'd)**

Sectors	Pension Officer		Alternate	
Rubber, Plastics, Transportation Equipment	Larry Martello	314-0587	Mark Eagles	314-0599
Printing, Primary Metals, Machinery...	Mark Henry	314-0584	Doug Kaye	314-0605
Electrical, Non-Metallic, Chemicals	David Kearney	314-0590	Elizabeth Addo	314-0607

2. ALPHA ALLOCATIONS - Defined Benefit & Multi-Employer Plans - (Plans with less than 250 members)

Alpha Range	Pension Officer		Alternate	
A - BRI	David Allan	314-0612	Claude De Souza	314-0608
BRO - COM	Steve Young	314-0646	Doug Kaye	314-0605
CON - EZZ	Alain Malaket	314-0609	Claude De Souza	314-0608
F - HAZ	Larry Murray	314-0644	Merle Corbie	314-0637
HEA - KMZ	William Qualtrough	314-0641	Lynn Barron	314-0639
KNA - MOQ	Elizabeth Carter	314-0604	Wynnell De Landro	314-0603
MOR - PNZ	Stanley Chan	314-0635	John Staric	314-0596
POL - SHE	Maureen Barber	314-0645	Lynn Barron	314-0639

2. Alpha Allocations - Defined Benefit & Multi-Employer Plans - (Plans with less than 250 members) (cont'd)

Alpha Range	Pension Officer		Alternate	
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TORR *	John Graham	314-0647	John Staric	314-0596

* Companies with alpha-numeric names

3. ALPHA ALLOCATIONS - Defined Contributions Plans

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BAY - Canada	Doug Kaye	314-0605	Steve Young	314-0646
Canadian - COK	Margaret Fennell	314-0600	John Graham	314-0647
COL - DIL	Claude De Souza	314-0608	David Allan	314-0612
DIM - FLO	Elizabeth Addo	314-0607	David Kearney	314-0590
FLU - HAL	Margaret Fennell	314-0600	Alain Malaket	314-0609
HAM - JAL	Merle Corbie	314-0637	Larry Murray	314-0644
JAM - LEU	Wynnell De Landro	314-0603	Elizabeth Carter	314-0604
LEV - MIL	Penny McIlraith	314-0594	Larry Falconer	314-0610

3. Alpha Allocations - Defined Contributions Plans (cont'd)

Alpha Range	Pension Analyst		Alternate	
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ONU -RAL	Lynn Barron	314-0639	Maureen Barber	314-0645
RAM -SHA	John Staric	314-0596	Stanley Chan	314-0635
SHE -THA	Merle Corbie	314-0637	Larry Murray	314-0644
THE -VUL	Lynn Barron	314-0639	William Qualtrough	314-0641
VUM *	Mark Eagles	314-0599	Larry Martello	314-0587

4. ALPHA ALLOCATIONS - Pension Plans of Insolvent Companies

Alpha Range	Coordinator	
A - E	Jai Persaud	314-0595
F - P	Robin Gray	314-0593
Q *	Lawrence Contant	314-0602

* Companies with alpha-numeric names

**The Pension Commission is Moving on
Monday, May 9, 1994**

The PCO will open its doors for business on the 29th floor of 250 Yonge Street (at Yonge and Albert Street, just south of Dundas Street) in downtown Toronto on May 9.

All correspondence, filings and submissions should be addressed or delivered on and after May 9, 1994 to:

The Pension Commission of Ontario
250 Yonge Street, 29th Floor
Toronto, ON M5B 2N7

All staff phone numbers and fax numbers remain unchanged.

Watch the next issue of the *PCO Bulletin* for more information on the move.

Please forward undeliverable copies to:

The Pension Commission of Ontario
101 Bloor Street West, 9th Floor
Toronto, Ontario
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THE PENSION COMMISSION OF ONTARIO

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BULLETIN

Spring 1994

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The PCO Bulletin is published by the Pension Commission of Ontario, which is located at 101 Bloor Street West, 9th Floor, Toronto, Ontario M7A 2K2 until May 6, 1994 (416) 314-0660 facsimilie (416) 314-0650. From May 9, 1994 the address of the Pension Commission of Ontario is 250 Yonge Street (just south of Dundas Street), 29th Floor, Toronto, Ontario M5B 2N7. Phone and facsimilie numbers remain unchanged.

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* * *

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The Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 (as amended), the terms of the pension plan and the policy and practices of the PCO should be considered in determining specific legislative and other legal requirements and professional advice should be sought.

ISSN 1180-1565

The focus of this issue of the PCO Bulletin is on compliance. Several articles describe situations, offer advice and provide information to pension plan administrators, their agents and staff about how problems can be avoided and how applicants can facilitate the timely approval of applications and submissions.

The articles describe:

- *circumstances in which filings are frequently deficient*
- *tips on how best to approach the application process and deal with PCO staff*
- *the most common problems relating to applications to register new plans and plan amendments*
- *how the Pension Plans Branch has been restructured to improve service*

When applicants follow these suggestions, the PCO is able to process filings more quickly and efficiently. PCO staff are striving to achieve an efficient pension regulatory system to serve the best interests of all parties.

PCO Urges Plan Administrators to Demonstrate Compliance for A More Efficient Regulatory System

The Director of the Pension Plans Branch urges pension plan administrators, their agents and staff to ensure that filings and submissions are complete, correct and certified (where applicable) when filed with the PCO. The result will be better service and an expedited approvals process.

In remarks made to the Lexium Conference on *Pension Policy and Regulation in Ontario* held in Toronto last September, Nurez Jiwani, Director - Pension Plans Branch reported that more than half the applications and filings received by the PCO are deficient in some manner. This problem significantly increases the PCO's workload and can cause lengthy delays in the approval of applications and requests requiring consents.

Some pension plan administrators, their agents and staff may be unaware of some of the steps that should be considered or taken before contacting PCO staff about an application, submission or filing. Please see the article in this issue *Dealing With the PCO: Tips for Plan Administrators, Agents and their Staff*.

If administrators and their agents comply fully with the requirements of the Pension Benefits Act (PBA) and Regulation, filings will be processed in a more timely manner. Such co-operation will improve efficiency, reduce administrative costs and benefit all users of the pension regulatory system.

Volume of Business Processed by PCO Staff

In 1992, 48 branch staff handled a total 51,600 applications and filings. The receipt of deficient filings frequently leads to phone calls and correspondence between PCO staff and administrators and their agents. This, in turn, causes unnecessary delays in processing filings and submissions.

In light of the high volume of business, the need to submit complete, accurate and certified documents is clear. This is a major factor affecting the Commission's ability to provide quality service to stakeholders. It also affects, by extension, the PCO's ability to regulate pension plans effectively.

Most Common Filing Problems

PCO staff have identified the most common situations where incomplete or deficient filings consistently cause delays in the acceptance of filings and the approval of applications. These situations are discussed below.

Annual Information Returns (AIRs)

Some pension plan administrators submit Annual Information Returns which do not show employer and employee contributions to the pension fund as required. In addition, many returns do not show the actual amount of employer contributions **paid** into the fund for the filing period.

In other cases, the Annual Information Return filing fees and the Pension Benefits Guarantee Fund (PBGF) assessments are calculated incorrectly, thus delaying processing of the return. The failure of a plan administrator or actuary to certify a PBGF assessment will certainly cause a delay in processing the assessment.

Registration of a Pension Plan or a Pension Plan Amendment

Pension plan administrators registering a plan must comply with the requirements described in the Administrative Practice on page 12 of this issue (also referred to as R500-201 on the BBS).

Typically, plan administrators fail to complete or submit the necessary application and plan documentation. Inevitably, these omissions delay the registration process.

In other instances, plan administrators do not provide or fully complete the Certificate of Compliance that is required when registering a new plan or plan amendment. This certificate contains the administrator's certification that the terms of the plan, or amendments to it, are in compliance with the requirements of pension legislation.

Early Retirement Windows

Pension plan administrators must demonstrate that they have complied fully with the benefit improvements, notice requirements, and funding provisions of the PCO's policy on early retirement windows, or obtain the agreement of the Superintendent to exercise discretion and vary the requirements. Compliance with these aspects of the policy must be met before plan members are offered an early retirement window option.

Refund of Member Contributions

Pension plan administrators should note that, in order to refund required contributions to plan members, they must receive approval from the Commission.

It is necessary to amend a pension plan to provide for a refund of member required contributions unless the plan already contains such a provision. The amendment must make it clear that the employer has assumed responsibility for funding all pension benefits associated with the required contributions being refunded.

Plan administrators must also comply with the PCO's published policy which requires that there is equitable treatment of the individuals within any category or categories (actives, retirees, deferreds) to whom the refund is being made. Failure to comply with this or other requirements will cause delays in approving applications for the refund of member contributions.

Refunds of an Employer Overpayment to a Plan

In applying to the Commission for a refund of an employer overpayment to a pension plan, plan administrators must specify the type of overpayment which was made. In addition, plan administrators should be aware that the legislation requires that an application to the Commission for such a refund must be made in the same fiscal year in which the employer's overpayment occurred.

The PCO advises plan administrators to consult its published policy on the notice requirements relating to an application for a refund of an employer overpayment to a pension plan.

Winding up a Pension Plan

The PCO published Compliance Assistance Guideline #4 (Revised December 1990), (also referred to as W100-100 on the BBS) to assist plan sponsors with the wind up and related issues.

Pension plan administrators are required to issue a Notice of Proposal before proceeding with the wind up of a plan. Plan administrators should note that a wind-up report, along with the related checklist, must be filed with the Commission within 6 months from the effective date of the plan wind up.

For non-contributory pension plans, the effective date of wind up cannot be earlier than the date on which plan members are given notice of the proposal to wind up the pension plan.

In the case of contributory pension plans, the effective date of the wind up cannot be earlier than the date on which members' contributions to the plan cease to be deducted.

The Commission has found that, when pension plans are wound up, there are often serious problems caused by the failure to include or properly value all the benefits to which members are entitled particularly, enhanced early retirement benefits to which members who meet certain age and service conditions are entitled to "grow in" in accordance with the requirements of the legislation.

The failure of some pension plan administrators to proceed with the distribution of members' benefits soon after the wind-up report is approved is a further cause of delay in winding up pension plans.

Application for a Refund of Surplus

Pension plan administrators who apply to the Commission for a refund of surplus must issue a notice of the application to members, former members and certain other persons specified in the legislation. The notice must state how much of the surplus is attributable to employer and employee contributions to the pension plan. The notice must also disclose the plan's provisions that relate to how the surplus amount is to be dealt with on wind up of the plan including historical language and amendments.

In addition, pension plan administrators must outline in their application to the Commission, how the employer has complied with all the legislative requirements needed to receive the Commission's approval for a refund of surplus.

In general, the Commission will require that the members' share of any surplus be distributed, before surplus is paid to an employer.

Full Wind Ups with Surplus Distribution Outstanding

The PCO has noted that there are currently 200 pension plan wind ups in progress where the basic benefits have been paid but the distribution of surplus is outstanding. The failure of a plan administrator to resolve this issue has delayed the wind-up process in some cases for a period of two, three, or five years.

The legislation requires that the distribution of all pension plan assets occur at the time a plan is wound up. The PCO

has recently begun to take measures to ensure that the administrators of the 200 plans for which the distribution of surplus assets is outstanding, proceed with the distribution of these assets.

Insolvent Companies

There are sometimes delays in winding up the pension plan of a company which has become insolvent. The PCO is currently monitoring the progress of the wind ups of about 200 pension plans of insolvent companies. The PCO wants to ensure that these pension plans are wound up on a timely basis and at the minimum possible cost to the plan beneficiaries.

Conclusion

With an awareness of the common causes that delay the processing and approval of applications, a better understanding of how best to approach PCO staff and, by submitting accurate, complete, certified information - you can facilitate timely approval of your applications and acceptance of your filings.

Basic Facts About Ontario Pension Plans: Pension Plan Registration and Wind-up Statistics

There has been considerable interest expressed by the pension community in pension plan data over the past year. Consequently, in the August 1993 issue of the *PCO Bulletin*, we announced plans to publish statistics about Ontario pension plans regularly.

In October, *Pension Plans in Canada (Data for 1/1/92)* was published by Statistics Canada and attracted considerable media attention. As a follow-up to the interest generated by that publication, we featured an article in the winter issue of the *PCO Bulletin* which was prepared by Karen Maser, Chief, Pensions Section at Statistics Canada. In her article, Ms. Maser summarized key data about Ontario pension plans.

In this and future issues of the *PCO Bulletin*, we will provide *Basic Facts About Ontario Pension Plans* and focus on activity relating to pension plan registrations and wind ups. As our ability and means to capture data increases, more pension plan statistics may be available in the future.

Statistics as at December 31, 1992

Chart A represents the number and type of active pension plans registered with the PCO as at December 31, 1992. At that time, 8,043 active pension plans covering 1,931,972 members were registered. (Active pension plans include plans that are in the process of being registered and do not include those plans which are in the process of being wound up in which members are no longer accruing benefits.)

Statistics as at December 31, 1993

Chart B displays the type of new pension plans registered during the year and membership by type of plans.

During 1993, a total of 298 new pension plans covering 17,159 members were registered with the PCO. One hundred and twenty-eight new defined benefit pension plans were registered during the year covering 9,283 members, compared to 168 defined contribution pension plans covering 6,866 members registered during the period.

Chart C indicates that as at December 31, 1993, there were 7,666 active pension plans registered with the PCO, covering 1,891,827 members. There were 377 fewer active pension plans as compared with the total number of active pension plans at December 31, 1992 and a corresponding drop of 40,145 people covered by pension plans in Ontario for the period.

Chart D provides information about full and partial plan wind ups approved by the Superintendent of Pensions during 1993.

A total of 668 full wind ups affecting 18,600 beneficiaries were approved last year. Of these full wind ups, 451 were defined contribution plans affecting 7,528 beneficiaries and 206 were defined benefit pension plans affecting 10,838 beneficiaries. There were 11 "other" plans (e.g., multi-employer or "hybrid" plans) that wound up affecting 234 beneficiaries.

A total of 151 partial plan wind ups were approved during the same period affecting 10,394 beneficiaries. Of these partial wind ups, 47 were defined contribution plans affecting 1,581 beneficiaries and 100 were defined benefit pension plans affecting 8,457 beneficiaries.

Active Plans by Plan Type as of December 31, 1992 (Chart A)

Active Membership size	Defined Benefits		Defined Contributions		Multi Employer Plans		Other		Total	
	Plans	Members	Plans	Members	Plans	Members	Plans	Members	Plans	Members
0	168	0	108	0	1	0	1	0	278	0
1	590	590	123	123	0	0	5	5	718	718
2-249	2,555	164,098	3,608	99,738	35	3,507	33	2,691	6,231	270,034
250-499	292	102,907	51	17,885	22	8,010	7	2,310	372	131,112
500-999	165	116,168	20	14,481	20	14,101	5	3,165	210	147,915
1000-4999	139	275,697	16	25,918	28	66,676	3	7,218	186	375,509
5000-9999	20	132,836	0	0	9	66,368	1	9,691	30	208,895
10000+	16	746,370	0	0	2	51,419	0	0	18	797,789
Total	3,945	1,538,666	3,926	158,145	117	210,081	55	25,080	8,043	1,931,972

New Plans Registered in 1993 (Chart B)

Month	# of New DB Plans	# of Members	# of New DC Plans	# of Members	# of New Other Plans	# of Members	Total # of New Plans	Total # of Members
Totals	128	9,283	168	6,866	2	1,010	298	17,159

Active Plans by Plan Type as of December 31, 1993 (Chart C)

Active Membership	Defined Benefits		Defined Contributions		Multi Employer Plans		Other		Total	
	Plans	Members	Plans	Members	Plans	Members	Plans	Members	Plans	Members
0	141	0	67	0	1	0	2	0	211	0
1	561	561	104	104	0	0	2	2	667	667
2-249	2,387	152,229	3,495	101,730	36	3,474	52	3,933	5,970	261,366
250-499	269	94,775	62	21,292	27	9,808	11	3,701	369	129,576
500-999	167	115,923	20	14,464	16	11,415	9	6,308	212	148,110
1000-4999	143	282,604	17	27,376	29	69,269	7	16,837	196	395,086
5000-9999	15	104,084	0	0	7	52,627	2	17,118	24	173,829
10000+	15	744,318	0	0	2	38,875	0	0	17	783,193
Total	3,698	1,494,494	3,765	164,966	118	184,468	85	47,899	7,666	1,891,827

Pension Plan Wind Ups in 1993 (Chart D)

Month	# of DB Plans	# of Beneficiaries	# of DC Plans	# of Beneficiaries	# of Other Plans	# of Beneficiaries	Total # of Full Wind Ups Approved	Total # of Members
Partial	100	8,457	47	1,581	4	152	151	10,394
Full	206	10,838	451	7,528	11	234	668	18,600

Announcements

Commission Decides on the Role of the Presiding Officer

At the Commission meeting held on January 27, 1994 the Commission discussed the matter of the role of the presiding officer at a pre-hearing conference and considered whether the presiding officer should continue as a member of the hearing panel without requiring the consent of all parties to the hearing.

The Commission adopted the policy that the presiding officer at a pre-hearing conference has the right to continue as a member of the hearing panel.

1990 Consolidated Office Version of Regulation 909 Contains an Error

There is an error in s. 24(3.1) of Regulation 909. The provision reads "Despite subsection (2)..." and should read "Despite subsection (3)..."

Society of Actuaries' Research Project Underway

Concern about the decline in pension plans throughout North America has increased over the past decade among governments and pension industry consultants.

The Society of Actuaries and the Canadian Institute of Actuaries, with support from the Pension Commission of Ontario, are studying the impact of these conditions on the retirement security of employees.

Research on the reasons for and the nature of plan terminations in Ontario from 1988 (when the *Pension Benefits Act*, 1987 became effective) to the present, form one part of the study. Data collection began on January 3, 1994.

The jurisdiction of Ontario was selected for several reasons, among them:

- Ontario had the highest number of pension plans and members of any jurisdiction in Canada (peaking in 1988 at approximately 10,500 plans) and
- Ontario's plan termination data is accessible.

The research objectives are:

- to analyze the number of full and partial plan terminations during the period, and the number of participants affected by such terminations

- to analyze the cause of the terminations, and to investigate the factors precipitating terminations, and
- to estimate the broad impact of plan terminations on the participants and to draw conclusions about the retirement security of the population.

Confidentiality in relation to the identity of plans, employers and plan members is being strictly observed and no consulting actuaries have access to the actual termination files. Those with access are sworn to the secrecy of privileged information under review. The final report will contain only statistical information.

The Society of Actuaries - Retirement Systems Research Committee - is the lead organization with respect to guiding the research and the ultimate analysis and formulation of the report. The report, expected in the Fall of 1994, will be published under the auspices of the Society of Actuaries.

Changes to Compliance Assistance Guidelines - Certain CAGs Are No Longer Applicable

In the future, CAGs as readers and pension practitioners have known them, will be discontinued. Instead, they will assume the same presentation as Administrative Practices and will be published in *The PCO Bulletin*. They are also available on the electronic bulletin board system.

Readers should be aware of the change in status of certain CAGs and make note of those that no longer apply:

- CAG #1 published in November 1990 - "A guide to preparing an application for registration of a pension plan" has been replaced by the CAG published as an administrative practice in this issue. (CAG #1 is also referred to as R500-200 on the BBS; all policies on the BBS can be located by key word search.)
- CAG #2 published in May 1990 - "A guide to preparing an annual information return" continues in effect, except for the PBGF assessment. Please refer to the "Special Notices" in the August 1993 issue of the *PCO Bulletin* which deals with these aspects of AIR filings:
 - PBGF Assessment - Schedule B (with instructions for completing Schedule B)
 - the requirement to collect retail sales tax on PBGF assessments, and
 - other related issues
- CAG #3 published in May 1990 - "A guide to preparing, reviewing and amending a Statement of Investment Policies and Goals" continues in effect (the Investment Policy Return is updated and published in this issue of the PCO Bulletin). (CAG #3 is also referred to as S700-100 on the BBS.)

- CAG #4 published in September 1990 - "A guide to the wind up of a pension plan" continues in effect. (CAG #4 is also referred to as W100-100 on the BBS.)
- CAG #5 published in October 1993 - "A guide to completing the pension plan document checklist effective November 1, 1992" is not applicable on and after May 1, 1994 since the submission of a Pension Plan Document Checklist is no longer required. (CAG #5 is also referred to as R500-250 on the BBS.)
- A new CAG - "A guide to preparing an application for registration of a pension plan" is published as an administrative practice in this issue at page 12. It replaces CAG #1 and is now effective. The CAG includes the application Form 1 (prescribed, English version) and the Fees Schedule to the application. (This is referred to as R500-201 on the BBS.)
- A new CAG - "A guide to preparing an application for the registration of a pension plan amendment" is published as an administrative practice in this issue at page 23. It is now effective and includes prescribed Form 1.1. (This is referred to as R500-251 on the BBS.)

Update on the *PCO Bulletin* in 1993 and 1994

In Volume 4, only two issues were published. These were the August, 1993 and Dec '93 - Jan '94 issues. Those issues were unusually lengthy and this, in part, accounts for there being only two issues in that Volume. Future issues of the *PCO Bulletin* will be referenced seasonally. We also plan to resume publishing on a quarterly basis in 1994.

PCO to Adopt Revenue Canada Numbering System

As a convenience to plan administrators, the PCO intends to adopt Revenue Canada's plan registration numbers in 1994 and will phase out the use of separate provincial plan numbers.

More information on this and other measures designed to harmonize pension plan administration among jurisdictions will be available in coming months.

PCO Office Relocation Effective on May 9, 1994

On Monday, May 9, the PCO will open its doors for business on the 29th floor of 250 Yonge Street (Albert Street and Yonge Street) which is just south of Dundas Street in downtown Toronto.

All correspondence, filings and submissions should be addressed or delivered on and after May 9, 1994 to:

The Pension Commission of Ontario
250 Yonge Street, 29th Floor
Toronto, ON M5B 2N7

All staff phone and fax numbers remain unchanged.

Administrative Practices



Pension
Commission
of Ontario

Commission des
régimes de retraite
de l'Ontario

SECTION:	Assets
INDEX NO.:	A700-225
TITLE:	Superintendent Consent Required for Asset Transfer under subsection 81(8)
APPROVED BY:	Superintendent of Pensions
PUBLISHED:	Bulletin 5/1 (Spring, '94) page 10
PUBLISHED:	
EFFECTIVE DATE:	
REVISED DATE:	

Subsection 81(8) is applicable where a portion of the assets of one pension plan will be transferred to another plan and no sale, assignment or disposition has occurred.

Subsection 81(8) of the Pension Benefits Act (the "PBA") states:

No transfer of assets shall be made from one pension plan to another pension fund in circumstances where sections (1) to (7) do not apply or where section 42 or 80 does not apply, without the prior consent of the Superintendent or contrary to the prescribed terms and conditions and for the purpose, subsections (5) to (7) apply with necessary modifications.

Subsections 81(1) to (7)

The PCO Merger Policy (also referred to as M200-151 on the BBS) dated September, 1993, identifies conditions to be met in order to obtain the Superintendent's consent to a transfer of assets where subsections 81(1) to (7) apply. These subsections apply where all of the assets of one pension plan will be transferred to another plan and no sale, assignment or disposition has occurred.

Subsections 42 and 80

Section 42 identifies the transfer options which must be provided, in specific circumstances, to an individual plan member who has terminated employment or plan membership and is entitled to a deferred pension at the date of termination. Under these circumstances, the Superintendent's consent to the transfer of the commuted value of the deferred benefit is normally not required unless subsection 19(4) or 19(10) of the regulations apply.

In accordance with section 80, no transfer of assets from one pension fund to another pension fund as a result of the sale, assignment or disposition of all or part of an employer's business, or all or part of the assets of an employer's business may occur without the prior consent of the Superintendent. PCO Policy Statement 2 (called "Asset Transfer Resulting from Sale of Business" and referred to as A700-200 on the BBS), dated July 18, 1988, identifies acceptable methods of allocating assets between the benefit liabilities of the plan members who are affected by the sale, assignment or disposition and the benefit liabilities that will be retained in the ongoing portion of the plan.

Obtaining Consent For Subsection 81(8) Transfers

Subsection 81(5) applies to asset transfers made under subsection 81(8). In accordance with subsection 81(5), the Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members affected by the transfer.

In circumstances where an application for the Superintendent's consent to a transfer of assets must be made under subsection 81(8), the Merger Policy (M200-151) and Policy Statement 2 (A700-200) identify conditions under which the Superintendent would consider the members' and former members' benefits to be adequately protected as required by the PBA. These conditions apply with necessary modifications to applications for asset transfers under subsection 81(8) from pension plans registered in Ontario.

Reciprocal Transfer Agreements

Please note that by definition a "reciprocal transfer agreement" provides for the transfer of money or credits for employment or both in respect of individual members. Except as permitted under subsection 80(10), the Superintendent's prior consent to an asset transfer with respect to a group of individuals must be obtained in accordance with subsections 80(5) or 81(5) as applicable.



SECTION: Registration

INDEX NO.: R500-201

TITLE: Preparation of an Application for Registration

APPROVED BY:

PUBLISHED: Bulletin 5/1 (Spring '94), page 12

PUBLISHED:

EFFECTIVE DATE:

REVISED DATE:

A Guide to Preparing an Application for Registration of a Pension Plan

This administrative practice replaces CAG #1 which was published in February 1990.

*On and after May 1, 1994, the Pension Plan Document Checklist is **no longer required** when making application for the registration of a pension plan or a plan amendment. The Pension Plan Document Checklist was introduced in Compliance Assistance Guideline #5 and was effective on November 1, 1992.*

This guideline is designed to assist the Administrator of a pension plan in completing and filing an application for registration of a pension plan (Form 1) with the required supporting documents. It applies to all applications submitted on or after May 1, 1994 which is the effective date for revised Form 1.

A completed application for registration includes several components:

- completed Application for Registration (prescribed Form 1) and fees schedule;
- required supporting documents; and
- registration fees (cheque is made payable to the Minister of Finance).

Requirement to Identify the Administrator

An Administrator must be identified in order for the pension plan to be eligible for registration. The Administrator is legally responsible for ensuring that the pension plan and pension fund are administered in accordance with the *Pension Benefits Act*, R.S.O. 1990, (the "Act"), and Regulation 909. The following bodies generally may serve as the Administrator:

- an employer or employers;
- pension committee composed of representatives of members of a pension plan;
- a pension committee composed of representatives of the plan sponsor and members;
- an insurance company (only if the insurance company has assumed full liability for the pension benefits);
- a board of trustees (in the case of multi-employer pension plans [MEPPs]); and
- an agency, board or commission made responsible by legislation for the administration of a pension plan.

Effective Date of the Pension Plan

The date on which the pension plan becomes effective is required on the application. This may differ from the date of establishment which refers to the date on which a Resolution of the Board of Directors, or minutes, or other documentation evidences the establishment of a pension plan. The date of establishment is not required on the application. However, the legislation requires the Administrator to apply to the Superintendent of Pensions for registration within 60 days after the day the pension plan is established.

Funding Issues

There are generally two funding approaches: pension benefits fully guaranteed by an insurance company, or a pension fund.

The first approach to funding can be adopted only in the case of a “guaranteed annuity” plan, where pension benefits are completely insured or guaranteed by an insurance company which has assumed full liability for the pension benefits.

The name and address of the insurance company must be provided on the application.

If the second approach to funding is adopted, a pension fund is established to support the pension plan. All necessary arrangements for funding must be in place at the time the application for registration is made. These arrangements will identify:

- the name of the fund;
- the name and address of the custodian (e.g. trust or insurance company); and
- the names and addresses of all agents of the plan administrator including actuaries and investment counsel.

Plan Membership

The application must document all active members of the plan as of the effective date of the pension plan. The total number of male and female members in their respective provincial jurisdictions of employment must be recorded.

Registration Fees Schedule

The Fees Schedule for registration of a pension plan requests membership details in the pension plan as of the effective date. There is a section with instructions for calculating the fees payable in accordance with the formula prescribed by section 2 of Regulation 909.

Jurisdiction Where the Plurality of Members Are Employed Regulates the Pension Plan

The province with a plurality of members of a pension plan employed in that province (in accordance with reciprocal agreements between designated provinces or territories), assumes the role of regulator of the pension plan. The regulator administers legislation and receives fees for all membership in the designated provinces or territories.

Registration fees payable, therefore, are based on the total number of plan members employed in the designated provinces or territories as recorded in the application.

Required Supporting Documents

Unless the application includes all of the following documents (applicable to the type of pension plan), the application cannot be processed by the PCO.

Supporting documents must be certified as true copies by an authorized officer of the employer or plan sponsor or other appropriate person authorized by the employer or plan sponsor (certification also applies to “replacement pages” for plan texts).

The Administrator is responsible for ensuring that certified copies of the following documents (where applicable in the circumstance), are attached to the application:

- plan text and any amendments;
- collective agreement if plan was set up in accordance with a collective agreement;
- trust agreement(s);
- deposit contract(s) with an insurance company;
- group annuity contract(s);
- explanatory statement to members and persons eligible to become members;
- Investment Policy Return and where applicable, a Statement of Investment Policies and Goals;
- cost certificate and actuarial report (if a defined benefit plan);

The following additional information must be supplied with the application, where appropriate:

- names and addresses of each member of the pension committee, board, agency or commission that is the Administrator;
- names and addresses of each employer or plan sponsor participating in the pension plan;
- names and certificate of registration number(s) for all other existing pension plans of the employer(s) or plan sponsor(s); and
- names of any previous plan(s), certificate of registration number(s) and their current status.

Registration fees, calculated according to the Fees Schedule found in the application (Form 1), must be filed together with the application. The cheque is payable to the Minister of Finance and must accompany the application.

Declaration

The declaration must be signed by the administrator or the authorized signing officer and the signature must be witnessed.

The signed declaration is evidence that the Administrator fully understands the obligation to ensure that the filed documents comply with the *Pension Benefits Act* and Regulations of Ontario and the legislation of any other designated jurisdiction that applies to the plan.

The signed declaration further evidences and confirms that this obligation has been met.

Pension Commission of Ontario Procedures

The application for registration will not be processed unless all components including

- applicable and required supporting documents and
- fees schedule and fees are included.

The Superintendent of Pensions will acknowledge the application in writing within 30 days upon receipt of a fully executed application for registration with the required supporting documents and fees.

Certificate of Registration

When the processing of the application is complete, the Superintendent will issue a certificate of registration based on the administrator's declaration of compliance with all applicable legislation. If the application for registration is deficient, the certificate for registration will be issued only when the Superintendent is satisfied that all necessary documentation has been filed.

How to Obtain Copies of Form 1

- 1) For convenience, readers of the *PCO Bulletin* may reproduce the application for registration (Form 1) found in this administrative practice. The French version of Form 1 will be published in the next issue of the *PCO Bulletin*.
- 2) Until May 6, 1994 copies of the application for registration (Form 1) can be obtained from The Pension Commission of Ontario, Revenue Section, 101 Bloor Street West, Toronto, Ontario M7A 2K2. On and after Monday, May 9, 1994 copies of the application for registration (Form 1) can be obtained from The Pension Commission of Ontario, 250 Yonge Street, 29th Floor, Toronto, Ontario M5B 2N7.
- 3) Subscribers to the PCO Conference on the BBS are also able to access a file containing Form 1 electronically. The form is in WordPerfect 5.1 ® format.
- 4) The PCO staff person responsible for Form 1 is George Ha at (416) 314-0676.

Delivery Instructions

To file the completed, certified application for registration, including required supporting documentation and fees, please deliver to the address noted above.

Enquiries

All enquiries concerning the application for registration should be directed to the appropriate Pension Officer or Pension Analyst.



Pension
Commission
of Ontario

250 Yonge Street
29th Floor
Toronto, ON M5B 2N7

Form 1 - Pension Benefits Act, 1990
Regulation 909
(Return Original with Fees - Keep Working Copy)

APPLICATION FOR REGISTRATION OF A PENSION PLAN

(Please type or print)

INFORMATION CONCERNING THE ADMINISTRATOR

1. The name of the administrator is:

(Note: If the administrator is a corporation, pension committee or board, use the name of the corporation, committee or board)

2. The mailing address and postal code of the administrator is:

3. The telephone number of the administrator is: ()

4. Indicate whether the plan administrator is: (Check one)

☐ an employer or employers
shown in paragraph 7

☐ a board of trustees

☐ a pension committee

☐ a board, agency or commission made responsible by
an act of the legislature for the administration of the
pension plan

☐ an insurance company

5. If the administrator is a pension committee, board, agency or commission, attach to this Form the name, mailing address and postal code of each member.

6. If the administrator is a pension committee, indicate the number of members who are representatives of:

(a) the employer or employers or any other person required to make contributions under the pension
plan on behalf of an employer

(b) members of the pension plan

(c) TOTAL

FOR PCO USE ONLY

C

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RA

/00/

☐ Form signed
☐ No plan documents received
☐ Additional fee needed:

\$

☐ Refund issued:

\$

Verified by:

INFORMATION CONCERNING THE EMPLOYER

7. The name of the employer is:

8. The mailing address and postal code of the employer is:

18. Are there any other pension plans already set up by the employer(s) as identified in paragraph 7 or by an affiliated or subsidiary company?

_____ Yes

_____ No

If "Yes", attach a list to the end of this Form, consisting of:

- (a) the name(s) of the plan(s);
- (b) the name(s) of the employer(s) for each plan, if different from that identified in paragraph 7;
- (c) the certificate of registration number(s) for each plan;
- (d) the name of the government with which each plan is registered; and
- (e) the number of Ontario members in each plan.

19. Have the members covered by this new plan participated in the past in any other pension plan of your company, including a predecessor, subsidiary or affiliated company?

_____ Yes

_____ No

If "Yes", state the name of the previous plan(s), the provincial registration number(s) and explain the current status of the plan(s):

FUNDING INFORMATION

20. Are the benefits provided for in the plan totally insured or guaranteed by an insurance company?

_____ Yes

_____ No

If "Yes", state the name, mailing address and postal code of the insurance company:

If "No", a fund must be set up. State the name of the fund and the name, mailing address and postal code of the custodian of the fund's assets:

Fund Name: _____

Custodian Name: _____

Mailing Address: _____

21. State the name, mailing address and postal code of the investment counsel, if any:
22. State the name, mailing address and postal code of the actuarial consulting firm, if any:

PLAN MEMBERSHIP AND REGISTRATION FEES

23. Enter below the number of members, excluding former members, and the location of their employment as of the effective date of the plan:

<u>Location of Employment:</u>	<u>Male</u>	<u>Female</u>	<u>Total</u>
Ontario			
Newfoundland			
Prince Edward Island			
Nova Scotia			
New Brunswick			
Quebec			
Manitoba			
Saskatchewan			
Alberta			
British Columbia			
Yukon Territory			
Northwest Territories			
Outside Canada			
TOTALS			*

(*Note: This total must equal the total number of members as of the effective date of the plan.)

24. Complete the **Schedule** provided by the Superintendent to calculate the required registration fee and enter the amount payable:

\$ _____

DOCUMENTS TO BE ATTACHED

25. This application for registration form must be accompanied by:
- (a) certified copies of the documents that create and support the pension plan;
 - (b) certified copies of the documents that create and support the pension fund;
 - (c) a certified copy of any reciprocal transfer agreement related to the pension plan;
 - (d) a certified copy of the explanations and other information provided to members and persons eligible to become members as required under subsection 25(1) of the Act (Information provided by administrator).
26. Indicate below whether the applicable documents and information are attached or are not applicable (N/A):
- _____ Certified copy of the text of the plan and of the amendments, if any.
 - _____ Certified copy of the collective agreement if the plan was set up in accordance with a labour agreement.
 - _____ Certified copy of the trust agreement(s).
 - _____ Certified copy of the deposit contract(s) with an insurance company.
 - _____ Certified copy of the group annuity contract(s).
 - _____ Certified copy of the explanatory statement to members and persons eligible to become members (subsection 25(1) of the Act).
 - _____ Certified copy of the statement of investment policies and goals.
 - _____ A list of the names and addresses of each member of the pension committee, board, agency or commission as per paragraph 5.
 - _____ A list of the other pension plans already set up by the employer as per paragraph 18.
 - _____ A list of the names and addresses of each employer participating in this plan as per paragraph 10.
 - _____ A list of names and certificate of registration numbers for all previous pension plans of the employer(s) as per paragraph 19.
 - _____ Other (*specify*): _____
 - _____ Application Fee enclosed. Computed in accordance with the Schedule provided by the Superintendent, payable to the **Minister of Finance**.

DECLARATION BY ADMINISTRATOR

I, _____, hereby apply for registration of the pension plan identified in this Form under the Act and the Regulations. I make the application in my capacity as the administrator/duly authorized signing officer of the administrator (*strike out inapplicable term*) of

_____ (the "Pension Plan").
(Name of the pension plan)

Attached are certified copies of the documents that create and support the Pension Plan and the pension fund as well as any other documents required to be filed under the Act.

I DECLARE THAT:

1. The documents filed with this Form include certified copies of the documents that create and support the Pension Plan and the pension fund and those documents, as well as all other documents filed with this application, comply with the Act and the Regulations;
2. I understand that the obligation to ensure that the documents filed with this Form comply with the Act and the Regulations is the responsibility of the administrator, and I declare that I have fulfilled that obligation and have complied with the provisions of the Act and the Regulations in making this application for registration; and
3. I acknowledge that this declaration extends to compliance with the pension legislation of any designated jurisdiction within Canada, other than Ontario, where the legislation of a designated jurisdiction applies to members and former members of the pension plan.

I declare that I am aware of my obligations under the Act as administrator of the Pension Plan and that the above statements are true to the best of my knowledge and belief.

DATED at the City of _____, this _____ day of _____, 199____.

Witness

Signature of administrator or authorized signing officer.

Name of Witness

Name of administrator or authorized signing officer (*printed*)

Address of Witness



APPLICATION FOR REGISTRATION - FEES SCHEDULE

PLAN MEMBERSHIP - Enter below the number of members by location of employment:

<u>LOCATION OF EMPLOYMENT</u>	<u>NUMBER OF MEMBERS</u>
Ontario	_____
Newfoundland	_____
Nova Scotia	_____
New Brunswick	_____
Quebec	_____
Manitoba	_____
Saskatchewan	_____
Alberta	_____
British Columbia	_____
Yukon Territory	_____
Northwest Territories	_____
SUBTOTAL	1. _____
Prince Edward Island	_____
Outside Canada	_____
TOTAL	
<i>(This total must equal the total number of members as of the effective date of the plan)</i>	2. _____

REGISTRATION FEES

From the Sub-total in Line 1 above, calculate the registration fees as follows:

\$6.15 per member \$ _____

Fees Payable: (Minimum \$200)
(Maximum \$50,000)

Registration Fees enclosed:** \$ _____

(Please make cheque payable to Minister of Finance)



SECTION: Registration

INDEX NO.: R500-251

TITLE: Preparation of an Application for Registration of a Plan Amendment

APPROVED BY:

PUBLISHED: Bulletin 5/1 (Spring '94), page 23

PUBLISHED:

EFFECTIVE DATE:

REVISED DATE:

A Guide to Preparing an Application for Registration of a Plan Amendment

*On and after May 1, 1994, the Pension Plan Document Checklist is **no longer required** when making application for the registration of a pension plan or a plan amendment. The Pension Plan Document Checklist was introduced in Compliance Assistance Guideline #5 and was effective on November 1, 1992.*

A pension plan administrator must apply to the Superintendent of Pensions for registration of an amendment within 60 days after the date on which the pension plan is amended. This guideline will assist the administrator of a pension plan in completing and filing an application for registration of an amendment (Form 1.1) with the required supporting documents.

Filing Requirements

A complete application consists of:

- certified copies of the amending documents;
- completed and signed Form 1.1;
- certified copies of any other prescribed documents; and
- any other prescribed information.

The prescribed documents and /or information that must accompany the application varies depending on the nature of the amendment. Please refer to the legislation and other published guidelines (either *Compliance Assistance Guidelines* or applicable articles in the *PCO Bulletin*) to determine the requirements applicable to your submission.

Completing the Application for Registration of a Plan Amendment (Form 1.1)

If the application involves:

- a transfer of assets;
- wind up (full or partial);
- distribution of surplus;
- merger of pension plans;
- plan conversion;
- a refund of contributions; or
- an early retirement or downsizing program

the type of plan amendment must be clearly indicated because the regulatory review process is specialized depending on the activity. If none of these transactions are invoiced, the "other" item must be checked.

Please note: many of the applications which involve special processing will require the filing of certain documentation in addition to the amending document and Form 1.1.

Declaration

The declaration must be signed by the plan administrator or an authorized signing officer and the signature must be witnessed. The signed declaration is evidence that the plan administrator understands fully the obligation to ensure that the filed documents comply with the *Pension Benefits Act* and Regulations of Ontario and the legislation of any other designated jurisdiction that applies to the plan.

The signed declaration confirms that this obligation has been met.

Required Supporting Documents

The amending documents submitted with the application must be certified as true copies by an authorized officer of the employer or plan sponsor or other appropriate person authorized by the employer or plan sponsor. Unsigned amendments or uncertified "replacement pages" are not acceptable for processing.

Pension Commission of Ontario Procedures

The application for registration will not be processed unless all components including applicable and required supporting documents are included.

Certificate of Registration

When the processing of the application is complete, the Superintendent will issue a certificate of registration based on the administrator's declaration of compliance with all applicable legislation. If the application for registration is deficient, the certificate for registration will be issued only when the Superintendent is satisfied that all necessary documentation has been filed.

How to Obtain Copies of Form 1.1

- 1) For convenience, readers of the *PCO Bulletin* may reproduce the application for registration of a plan amendment (Form 1.1) found in this administrative practice. The French version of Form 1.1 will be published in the next issue of the *PCO Bulletin*.
- 2) Until May 6, 1994 copies of the application for registration of a plan amendment can be obtained from The Pension Commission of Ontario, Revenue Section, 101 Bloor Street West, Toronto, Ontario M7A 2K2

On and after Monday, May 9, 1994 copies of the application for registration of a plan amendment (Form 1.1) can be obtained from The Pension Commission of Ontario, 250 Yonge Street, 29th Floor, Toronto, Ontario M5B 2N7.

- 3) Subscribers to the PCO Conference on the BBS can access a file containing Form 1.1 electronically. The form is in WordPerfect 5.1® format.
- 4) The PCO staff person responsible for Form 1.1 is George Ha at (416) 314-0676.

Delivery Instructions

To file the completed, certified application for registration of a plan amendment, including required supporting documentation, please deliver to the address noted above.

Enquiries

All enquiries concerning the application for registration of a plan amendment should be directed to the appropriate Pension Officer or Pension Analyst.



Pension
Commission
of Ontario

250 Yonge Street
29th Floor
Toronto, ON M5B 2N7

Form 1.1 - Pension Benefits Act, 1990
Regulation 909

APPLICATION FOR REGISTRATION OF A PENSION PLAN AMENDMENT

(Please type or print)

Pension Commission of Ontario ("PCO") registration number:

Name of pension plan:

Name of employer or sponsor:

Effective date of amendment:

(Day, Month, Year)

Amendment number *(where applicable)*

Please indicate whether the application involves:

☐ Transfer of assets

☐ Distribution of surplus

☐ Early retirement/
downsizing program

☐ Merger of plans

☐ Plan conversion

☐ Other

☐ Refund of contributions

☐ Full or partial wind up
of the pension plan

DECLARATION BY ADMINISTRATOR

I, _____, hereby apply for registration of the pension plan amendment identified in this Form under the Act and the Regulations. I make the application in my capacity as the administrator/duly authorized signing officer of the administrator (*strike out inapplicable term*) of

_____ (the "Pension Plan")
(State the name of the pension plan)

bearing the PCO registration number _____.

Attached is a certified copy of the amending document as well as any other document required to be filed under the Act.

I DECLARE THAT:

1. The documents filed with this Form include a certified copy of the amending document and that documents, as well as all other documents filed with this application, comply with the provisions of the Act and the Regulations;
2. I understand that the obligation to ensure that the documents filed with this Form comply with the Act and the Regulations is the responsibility of the administrator, and I declare that I have fulfilled that obligation and have complied with the provisions of the Act and the Regulations in making this application for registration; and,
3. I acknowledge that this declaration extends to compliance with the pension legislation of any designated jurisdiction within Canada, other than Ontario, where the legislation of a designated jurisdiction applies to members and former members of the pension plan.

I declare that I am aware of my obligations under the Act as administrator of the Pension Plan and that the above statements are true to the best of my knowledge and belief.

DATED at the City of _____, this _____ day of _____, 199__.

 Witness

 Signature of administrator or authorized signing officer.

 Name of Witness

 Name of administrator or authorized signing officer (*printed*)

 Address of Witness



SECTION:	Surplus
INDEX NO.:	S900-900
TITLE:	Allocation of Surplus Distributed to Members and Former Members on Wind Up
APPROVED BY:	Pension Commission of Ontario
PUBLISHED:	Bulletin 5/1 (Spring '94) page 28
PUBLISHED:	
EFFECTIVE DATE:	February 24, 1994
REVISED DATE:	

The following procedures apply where all or part of the surplus is to be allocated among the members, former members and any other persons, other than the employer, entitled to payment under the plan on the date of wind up, on the wind up of a pension plan in whole or in part.

Payment of surplus to such persons may be sought on an application pursuant to subsection 8(1)(a) of Regulation 909, as the result of a surplus sharing agreement pursuant to subsection 8(1)(b) of Regulation 909, or under subsection 8(2) of Regulation 909. Any allocation must be in the context of a wind up report otherwise approved by the Superintendent after considering all legislative requirements, including subsection 70(5) of the Pension Benefits Act (the PBA).

Superintendent's Discretion

1. Pursuant to subsection 70(5) of the PBA, the Superintendent may refuse to approve a wind up report that does not meet the requirements of the PBA and the regulations or that does not protect the interests of the members and former members of the plan.

Allocation of Surplus

2. Regulation 909 subsection 8(1)(a) provides for the payment of surplus out of a pension plan that is being wound up in whole or in part to or for the benefit of members, former members and other persons entitled to payments out of the plan on the date of wind up. Accordingly, all three groups named in that clause should share in the allocation of surplus when proceeding under that clause.
3. The Superintendent may refuse to approve any allocation of surplus contained in a wind up report, whether by cash or by benefit enhancements, that does not protect the interests of members and former members of the plan pursuant to subsection 70(5) of the PBA, and subject to the provisions of the plan.

4. The following examples of surplus allocation would, under the circumstances of most plans, be acceptable as protecting those interests:
 - a) indexing benefits to inflation;
 - b) in defined benefit plans, sharing in proportion to liabilities;
 - c) in a contributory plan, an application to the Commission under subsection 63(7) of the PBA for refund of member and deferred member contributions with an appropriate adjustment for retirees, provided that any surplus remaining is distributed using one of the other methods, and the plan provides or is amended to provide for the refund of member contributions;
 - d) in defined contribution plans, sharing in proportion to accumulated contributions plus interest;
 - e) distributing surplus in proportion to length of credited service under the plan;
 - f) retroactive application of the 50 per cent funding rule, with the appropriate adjustment for retirees, provided that any surplus remaining is distributed using one of the other methods, and the plan provides or is amended to provide for retroactive 50 per cent funding.
5. The benefit enhancements listed above may be notional enhancements for the purposes of allocating the surplus where the distribution will be made in the form of cash. Alternatively, the benefit enhancements may be provided as actual pension benefits in which event they will be treated as pension benefits for all purposes of the Act, including locking in. The same method of allocation need not be applied to each of the three groups of members, former members, and other beneficiaries under the plan on wind up. If the plan provisions do not stipulate the form in which the surplus is to be provided, the plan text must be amended.
6. Where it is in the best interests of the members and former members, benefit enhancements provided shortly before a wind up, if funded out of plan surplus, will normally be considered to be part of the surplus distribution proposal.
7. Other methods of allocating surplus will be considered. If another method is proposed, the applicant will be asked to describe why the recommendation is thought to protect the interests of the members and former members of the plan, pursuant to subsection 70(5) of the PBA.

Methods of Distribution

8. The following examples of methods of distributing the surplus allocated among members, former members and any other persons, other than the employer, entitled to payment under the plan on the date of wind up would, under the circumstances of most plans, be acceptable as protecting the interests of the members and former members of the plan, pursuant to subsection 70(5) of the PBA:
 - a) benefit enhancements;
 - b) cash distribution; or
 - c) a combination of a) and b).
9. Anyone who is entitled to a deferred pension benefit either generally or as a result of a surplus distribution is entitled to the section 42 portability options and the subsection 73(2) transfer rights on wind up.

Documentation

10. The Administrator is required by section 70 to file a wind up report that sets out the benefits to be provided, and the methods of allocating and distributing the assets of the plan. A proposal for the allocation and distribution of plan surplus must be consistent with the provisions of the pension plan and, thus, plan amendments must be filed as appropriate to maintain this consistency.

-
11. No payment may be made out of a pension plan once a notice of proposal to wind up the plan has been given, except with the Superintendent's approval in accordance with section 70 of the PBA. Any assets of the plan, including surplus, may be disbursed only after the Superintendent's approval has been obtained in accordance with section 70, and in accordance with the approved wind up report.

Sharing Surplus with Plan Beneficiaries and Employer

12. These principles and procedures apply where surplus is shared among members, former members and other persons entitled to payments out of the plan on the date of wind up, or where an employer proposes to share surplus among the employer and members, former members and other persons entitled to payments out of the plan on the date of wind up. For payment of all or part of the surplus to an employer, the employer must make application to the Pension Commission of Ontario under Regulation 909 subsections 8(1)(b) or 8(2).

Common Problems To Avoid When Making An Application for Registration of a Pension Plan and a Plan Amendment

This article summarizes the most common mistakes and deficiencies encountered by PCO staff. If incomplete applications or improperly completed application forms are filed, processing delays will result.

You can eliminate unnecessary delays by planning ahead and avoiding these common errors made by plan administrators, their agents and staff in submissions to the PCO.

A Applications to Register New Plans

- Common Problem: No Investment Policy Return (IPR) is Filed

All applications to register new plans must include the Investment Policy Return (IPR), including applications to register new defined contribution plans.

Plans in which benefits are funded by a fully insured contract or a deposit administration contract, must complete only Parts A and B of the IPR.

Plans that are not funded by a fully insured contract or a deposit administration contract must complete Parts A and C of the IPR **and** submit a Statement of Investment Policies and Goals **together with** the application.

For your convenience, an updated version of the Investment Policy Return is found in this issue at page 37.

- Common Problem: No Statement of Investment Policies and Goals is Filed

This document forms part of the application and must be included with it. The requirement applies to all plans except those that are funded by a fully insured contract or deposit administration contract.

- Common Problem: Missing Employee Booklet

The booklet is an explanation of the plan provisions and the rights and obligations of members and persons eligible to become members of the plan. It must be provided to all those persons and filed together with the application.

In some smaller plans, the plan text itself frequently is used as the explanatory booklet and a separate employee booklet is not prepared. If this is the case, **please make this clear in the application.**

- Common Problem: Missing Cost Certificate and/or Actuarial Report

The Regulation requires that an initial cost certificate must be filed within 60 days of the establishment of the plan. If the plan provides defined benefits, a full actuarial report (which includes the cost certificate) is required to be filed with the application and within the 60 day time period.

- Common Problem: Uncertified Plan Documents

The plan text and any amendments submitted with an application must evidence adoption by the employer or plan sponsor. If they do not, certified copies will be requested.

B Applications to Register Plan Amendments

- Common Problem: Failure to Identify the Nature of the Amendment

If the plan amendment involves:

- an asset transfer;
- wind up (full or partial);
- distribution of surplus;
- merger of pension plans;
- plan conversion;
- a refund of contributions; or
- an early retirement program

this must be indicated by checking the appropriate section of the form.

If none of these transactions apply, the “other” box must be checked.

- Common Problem: Uncertified Amending Documents

Unsigned amendments or “replacement pages” for plan texts are frequently submitted. This practice is not acceptable. Only signed amendments are accepted and the employer or plan sponsor’s adoption of the contents of the replacement pages must be evidenced.

Dealing with the PCO: Tips for Plan Administrators, Agents and Staff

This article informs plan administrators, agents and their staff about how to approach the PCO and how to obtain better service and more timely approvals.

The Importance of Demonstrating Compliance

It is the responsibility of individuals in the pension industry, when dealing with the PCO, to **demonstrate** that applications, filings and submissions are in compliance with the Pension Benefits Act (PBA), the Regulations and PCO policies.

Applicants should ensure they have received appropriate professional, actuarial, or legal advice **before** making submissions or filings to the Commission. This will certainly reduce delays when members of the pension industry submit their applications or filings.

PCO staff will advise applicants about the practices and policies of the PCO. However, PCO staff cannot act as independent consultants. Interested parties should obtain independent, professional advice regarding their obligations under the PBA and Regulation.

The Relationship Between PCO Staff, the Superintendent of Pensions and the Commission

PCO staff, in the course of carrying out their duties, provide advice to both applicants to the PCO and to the Superintendent. Staff will review the facts of a submission or an application, and make recommendations based on these facts to the Superintendent or to the Commission (tribunal).

Advice provided by PCO staff is not binding upon the Superintendent. Neither is advice provided by the Superintendent or PCO staff binding upon the Commission (tribunal).

In each case, after considering the facts of an issue, the Superintendent or the Commission (tribunal) will render a decision. While such decisions are made independently, the Superintendent and the Commission (tribunal), as a matter of course, will review the material provided to them by the applicant and other interested parties. Consequently, it is in the interest of applicants to discuss their proposed application with the appropriate Pension Officer or Analyst prior to filing the application.

Important Considerations When Making Applications or Submissions

1) Timing

The PCO and, on occasion, the Commission (tribunal) have been in situations where applicants request a response to last-minute proposals, generally for a compelling business reason. In one case, an employer suddenly realized, a day or two before the planned announcement of an early retirement program for plan members, that it had failed to obtain agreement of the Superintendent in advance of offering the package. This resulted in considerable inconvenience to everyone concerned.

Applicants should be mindful that consultation with staff is especially important where the terms of a proposal, for instance, the terms of a proposed early retirement program, fall outside the parameters of the PCO's published guideline.

In cases such as the example cited above, it is impossible for the applicant to receive an immediate response to the application.

2) Content and the Need to Demonstrate Compliance

Plan administrators and their agents should be aware of the PCO's published guidelines and administrative practices. When making a submission to the Commission, it is necessary to follow the guideline or practice appropriate to the particular submission. Moreover, applicants should demonstrate that they are in compliance with the PCO guideline or the practice that is relevant to their submission.

3) Submissions that Deviate from Policy Guidelines

Sometimes applicants may propose a course of action that deviates from PCO policies and guidelines. For all such proposals, applicants must provide to PCO staff:

- a summary of the background and reasons leading to the proposed course of action;
- a description of the business purpose of the proposed course of action;
- an analysis of the legal and policy issues that form part of the proposed course of action;
- a summary of the applicants's opinion in the matter, including reasons why the proposed course of action should be allowed;

- references to the relevant sections of the PBA, Regulations and PCO policies which support the proposed course of action; and
- all arguments in support of any exemptions sought from the Superintendent or the Commission.

To further support the applicant's position, it may be necessary for the applicant to provide a numerical analysis of results expected from the proposed course of action. We strongly recommend, in these cases, that applicants consult with PCO staff well in advance of the event to determine the type of information they must provide.

4) Exercise of Discretion by the Superintendent or the Commission (Tribunal)

Under the PBA, it is open to the Superintendent of Pensions or the Commission to exercise discretion in certain matters.

In many such cases involving the exercise of discretion, policies have been published which attempt to indicate, in a conceptual manner, how this discretion will be exercised. It is important to note, however, that these policies may not fetter the discretion of the Superintendent or the Commission and every case will be considered on its merits.

Nevertheless, these policies provide guidance as to the issues that will be considered in exercising discretion and consequently, may assist in the preparation of an application.

5) Meetings with PCO Staff to Discuss a Proposed Application

In general, the purpose of a meeting with staff to discuss a proposed application, is to clarify or obtain direction with respect to PCO guidelines, practices and rulings. In most cases, such meetings are held after an applicant has made a submission to the Commission. However, applicants are urged to consider convening a meeting prior to making the application or filing the submission so that the applicant will be aware of all the relevant considerations before preparing an application.

Applicants are advised that upon receipt of the completed application, staff require approximately three months to process the application and prepare the case for presentation to the Commission. (Please refer to the article in the last issue of the *PCO Bulletin* concerning deadlines for the submission of applications to the Commission.)

The Pension Plans Branch: Restructured to Improve Service

While the focus of this issue is on measures that plan administrators, agents and their staff can take to ensure accurate, certified and complete filings and submissions, readers should be aware that efforts have been expended to improve service to stakeholders.

For instance, the branch underwent a major restructuring in May 1992 to deal with the substantial backlog of filings that had developed in the early years following pension reform. Re-engineering of review processes and practices continues.

The key feature of the restructuring was the recognition that Pension Officers and Pension Analysts should assume responsibility for managing caseloads of plans from "birth to death". (Pension Officers are responsible for managing a caseload of defined benefit plans and Pension Analysts are responsible for defined contribution plans.)

Officers and Analysts are aided and supported in managing all aspects of individual plans plus caseloads of up to 250 plans per Officer and 500 per Analyst by the creation of three technical consultant positions. The consultants' expertise relates to:

- filing, financial reporting and funding requirements
- registrations and special situations in ongoing plans namely, asset transfers, conversions and early retirement windows, and
- special situations in wind ups namely, wind up and surplus issues, PBGF and insolvencies.

Typically Officers and Analysts seek advice from the consultants and monthly professional development seminars are held to review common solutions to the problems and issues of the day. Accordingly Officers and Analysts can administer the legislation with greater certainty and consistency.

Furthermore, the opportunity presented by such a structure is that plan administrators, their agents and staff, as well as plan members and others such as collective bargaining agents can build a working relationship with the individual Officer or Analyst assigned to the plan. The result is a more systematic, thorough and therefore, efficient regulatory process.

Forms

Spousal Waivers of Joint and Survivor Pension (Form 3) and Pre-retirement Death Benefit (Form 4)

These prescribed forms were first published in English and French in the September, 1990 issue of the PCO Bulletin. The updated Forms are reproduced in English on pages 35 and 36 in this issue. The French versions of Form 3 and Form 4 will be published in the next issue of the PCO Bulletin. Readers are invited to make copies of these published Forms and complete them for compliance purposes.

Spousal Waiver of Joint and Survivor Pension

A person with a spouse, as defined under the PBA, at the date of retirement who is not living separate and apart, is required to elect a joint and survivor pension unless, the spouse and the member waive that entitlement by completing the prescribed form (Form 3).

It is important to note that the waiver is not effective unless it is delivered to the plan administrator or insurance company, where applicable, within the 12 month period immediately preceding the commencement of payment of the pension benefit as required by ss. 46(2) of the *Pension Benefits Act*. The waiver may be jointly cancelled by written and signed notice delivered before payment of the pension commences.

Spousal Waiver of Pre-retirement Death Benefit

In the case of pre-retirement death of the member, if the deceased member has a spouse, as defined under the PBA, who is not living separate and apart at the date of death, that spouse is entitled to the pre-retirement death benefit for the pension benefits accrued on or after January 1, 1987. The member and spouse can waive the entitlement by completing the prescribed waiver (Form 4) as provided under ss.48(14) of the PBA.

It is advisable that the member and/or the spouse obtain independent legal advice concerning their legislated rights and the legal effect of the waiver.

In either case, the spouse's eligibility to either of joint and survivor or pre-retirement death benefits (as defined under the PBA), depends on cohabitation of the member and the spouse at the time of retirement or death.

Superintendent's Form: The Investment Policy Return (IPR)

For the convenience of readers, the English version of the Investment Policy Return is reproduced here in its updated form. (The French version will be published in the next issue of the *PCO Bulletin*.)

When making an application to register a new pension plan, the application must include a completed Investment Policy Return (for details, please refer to the article *Common Problems to Avoid When Making an Application for Registration of a Pension Plan and a Plan Amendment* on page 31 of this issue).



SPOUSAL WAIVER OF JOINT AND SURVIVOR PENSION

Name of member/former
member's spouse

I, _____,
am the spouse, within the meaning of the *Pension Benefits Act, 1990*, of

Name of member/
former member

_____ who is entitled to a pension benefit under the

Name of pension plan

_____.

I am aware that, in the absence of a waiver, a pension payable to a former member who has a spouse on the date that the payment of the first installment of the pension is due must be paid as a joint and survivor pension as required by section 44 of the *Pension Benefits Act, 1990*.

I understand that I may waive any right to a survivor pension of at least 60 per cent of my spouse's pension benefit should my spouse predecease me. By waiving my right, my spouse will be able to elect an alternative form of pension which will provide me with no survivor pension or a pension which is less than the 60 per cent minimum.

I hereby waive my right to a joint and survivor pension as required by section 44 of the *Pension Benefits Act, 1990*. The signature of my spouse, below, serves as an acknowledgement that he or she agrees to such a waiver.

I understand that we may revoke this waiver at any time prior to the date of the commencement of payment of my spouse's pension.

City or Town,
Province

Dated at _____ in the Province of _____

Day, Month, Year

this _____ day of _____, _____.

Signature of spouse

Witness to
signature of spouse

Signature of member
or former member

Witness to
signature of member
or former member

Prior to completing this form, each party should consider obtaining independent legal advice concerning their individual rights and the effect of this waiver.

NOTE: This waiver is not effective unless it is delivered to the Administrator or the insurance company, where appropriate, within the twelve month period immediately preceding the commencement of payment of the pension benefit as required by subsection 46(2) of the *Pension Benefits Act, 1990*.



SPOUSAL WAIVER OF PRE-RETIREMENT DEATH BENEFIT

Name of Member or
former member

hereinafter the "member" or "former member", and

Name of Spouse

hereinafter the "spouse", hereby certify that we are spouses within the meaning of
the *Pension Benefits Act, 1990*.

We understand that, in the absence of a waiver, if the member or former member dies,

- (a) prior to the payment of a deferred pension; or
- (b) where the member continues in his or her employment after the normal retirement date,
prior to the commencement of payment of pension benefits,

then the person who is the spouse of the member or former member at the date of his or her
death is entitled to receive a pre-retirement death benefit of either a lump sum payment or an
immediate or deferred life annuity from

Name of pension plan

at the date of the member or former member's death.

We understand that we may waive the right of the spouse to receive any pre-retirement death
benefit, in which case payment of this benefit will be made to either,

- (a) a beneficiary designated by the member or former member; or
- (b) the personal representative of the member or former member for distribution as part of
his or her estate.

Name of spouse

We hereby waive the right of _____
to receive any payment under section 48 of the *Pension Benefits Act, 1990*.

City or Town,
Province

Dated at _____ in the Province of _____

Day, Month, Year

this _____ day of _____, _____

Signature of spouse

Witness to
signature of spouse

Signature of member
or former member

Witness to
signature of member
or former member

**Prior to completing this form, each party should consider obtaining independent legal
advice concerning their individual rights and the effect of this waiver.**



Pension
Commission
of Ontario

250 Yonge Street
29th Floor
Toronto, ON M5B 2N7

*Pension Benefits Act, 1990
Regulation 909*

INVESTMENT POLICY RETURN

*(To be submitted with the
Statement of Investment Policies and Goals)*

Instructions:

1. This return must be submitted for each pension plan required to be registered under the ***Pension Benefits Act***. It is accompanied by a Statement of Investment Policies and Goals, except for plans exempted under Instruction 2.
2. For plans completely invested in a fully insured contract and/or deposit administration general funds contract regulated by the ***Insurance Act*** or ***Canadian & British Insurance Companies Act (Canada)***, complete parts A and B. Under section 80 of Regulation 909, such pension plans are exempt from filing a Statement of Investment Policies and Goals.
3. For all other pension plans, complete Parts A & C.

PART A

Pension Commission of Ontario Registration Number: _____

Name of Employer/Sponsor: _____

Name of Pension Plan: _____

PART B

- I certify that:
- | | |
|----|---|
| a) | I am the duly appointed Administrator of the above pension plan. |
| b) | this plan is completely invested in a fully insured contract and/or deposit administration general funds contract regulated by the <i>Insurance Act</i> or <i>Canadian and British Insurance Companies Act (Canada)</i> . |

Name (print)

Signature

Date

PART C

All statutory requirements listed in this Part must be reflected in the Statement of Investment Policies and Goals, and checked off on this Return. Pension plans completely invested in "pooled funds" should check off the relevant areas, and mark N/A on the lines corresponding to the non-applicable items. This Return **and** the Statement of Investment Policies and Goals must be submitted to the Pension Commission of Ontario.

Statutory Requirements	Check (<input checked="" type="checkbox"/>)	Pension Commission Use Only
1. Type of pension plan (Reg. 67(3))	_____	
2. Nature of plan liabilities (Reg. 67(3))	_____	
3. Rate of return expectations and asset mix policy (Reg. 67(3)(b))	_____	
4. Investment portfolio diversification (Reg. 67(3)(a))	_____	
5. Categories/sub-categories of investment and loans (Reg. 67(3)(c))	_____	
6. Basis for valuation of investments not regularly traded (Reg. 67(3)(h))	_____	
7. Policy regarding conflict of interest (Reg. 67(3)(d))	_____	
8. Disclosure regarding conflict of interest (Reg. 67(3)(e))	_____	
9. Lending of cash or securities (Reg. 67(3)(f))	_____	
10. Retention/delegation of voting rights (Reg. 67(3)(g))	_____	

I certify that:

- (a)

I am the duly appointed Administrator of this plan
- (b)

the Statement of Investment Policies and Goals was adopted on _____
(Date)
- (c)

the Statement of Investment Policies and Goals submitted with the Investment Policy Return complies with the requirements of the **Pension Benefits Act** and Regulation thereunder, and that the information contained therein is, to the best of my knowledge and belief, true and correct.

Name (print)

Signature

Date

Index of PCO Policies on the BBS

In the last issue of the *PCO Bulletin*, an index of 168 individual policies in WordPerfect 5.1[®] and 164 individual policies in ASCII were published and these are now available on the PCO Conference. The 43 new policies listed below were uploaded in April, 1994 bringing the total number of individual policies (in WordPerfect 5.1[®]) available on the PCO Conference to over 200.

Please complete the questionnaire in the Dec '93 - Jan '94 issue of the *PCO Bulletin* at page "BBS-2" and fax to the PCO to obtain a copy of the BBS/PCO Conference Information Package.

A050-103.EXE	POLICY: ACTUARIAL REPORTS actuarial assumptions guidelines - solvency valuations (correction to A050-102.EXE) effective December 1993 (Dec 1993 - Jan 1994 Bulletin 4/2 p. 6)	F800-110.EXE	POLICY: FUNDING OF PLANS - contribution holidays and actuarial reports (Dec 1993 - Jan 1994 Bulletin 4/2 p. 25)
A400-850.EXE	POLICY: AMENDMENTS - registration of amendments, effective November 1, 1992 (Aug 1993 Bulletin 4/1 p. 29)	F800-125.EXE	POLICY: FUNDING OF PLANS - contributions in-kind not permitted effective March 25, 1993 (Aug 1993 Bulletin 4/1 p. 27)
A500-203.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - late filing fees, O. Reg. 909, ss. 18 (Aug 1993 Bulletin 4/1 p. 32)	F800-500.EXE	POLICY: FUNDING OF PLANS - failure to remit member contributions (Aug 1993 Bulletin 4/1 p. 23)
A500-800.EXE	POLICY: ANNUAL INFORMATION RETURN (AIR) - which AIRs required at wind up (Dec 1993 - Jan 1994 Bulletin 4/2 p. 27)	F800-800.EXE	POLICY: FUNDING OF PLANS - re-filing Election Report (Dec 1993 - Jan 1994 Bulletin 4/2 p. 26)
A700-175.EXE	POLICY: ASSETS - interim transfer of assets on purchase and sale (Aug 1993 Bulletin 4/1 p. 31)	F800-801.EXE	POLICY: FUNDING OF PLANS - no suspension of contributions in defined contribution plans (Dec 1993 - Jan 1994 Bulletin 4/2 p. 27)
B100-175.EXE	POLICY: BENEFITS - pension plans are not flexible benefit plans (Aug 1993 Bulletin 4/1 p. 7)	F800-950.EXE	POLICY: FUNDING OF PLANS - cessation of member contributions (Aug 1993 Bulletin 4/1 p. 31)
B100-275.EXE	POLICY: BENEFITS - indexing (Dec 1993 - Jan 1994 Bulletin 4/2 p. 25)	F800-975.EXE	POLICY: FUNDING OF PLANS - no provision to amortize negative solvency balance, O. Reg. 909 s. 5 (Aug 1993 Bulletin 4/1 p. 33)
B100-400.EXE	POLICY: BENEFITS - union membership as condition for benefit improvement (Dec 1993 - Jan 1994 Bulletin 4/2 p. 27)	G100-100.EXE	POLICY: GRADUAL AND UNIFORM - age-related benefit formulae, PBA ss. 11(1) & (4), published BBS - Jan 1994 (Dec 1993 - Jan 1994 Bulletin 4/2 p. 14)
B100-500.EXE	POLICY: BENEFITS - settlement of benefits (Dec 1993 - Jan 1994 Bulletin 4/2 p. 26)	I150-700.EXE	POLICY: INFORMATION - items marked "Private and Confidential" (Dec 1993 - Jan 1994 Bulletin 4/2 p. 26)
B100-850.EXE	POLICY: BENEFITS - survivor benefit waived (Dec 1993 - Jan 1994 Bulletin 4/2 p. 27)	I150-800.EXE	POLICY: INFORMATION - member's right to information, annual statements, termination statements, notices (Aug 1993 Bulletin 4/1 p. 1)
F100-900.EXE	POLICY: FINANCIAL STATEMENTS - requirement for auditor's report O. Reg. 909, s. 76 and s. 80 (Aug 1993 Bulletin 4/1 p. 30)	I300-100.EXE	POLICY: INTER-JURISDICTIONAL ISSUES - how to change province of registration (Dec 1993 - Jan 1994 Bulletin 4/2 p. 17)

I400-400.EXE	POLICY: INVESTMENT OF PENSION FUNDS - investment in a limited partnership, O. Reg. 909, s. 70 and s. 71 (Aug 1993 Bulletin 4/1 p. 31)	P300-700.EXE	POLICY: PENSION COMMISSION OF ONTARIO (PCO) - PROCEDURES - pre-hearing conference procedures (Aug 1993 Bulletin 4/1 p. 23)
L050-600.EXE	POLICY: LIFE INCOME FUND - direct transfer from plan to LIF, Income Tax Act (Canada), s. 147.3 effective June 10, 1993 (Aug 1993 Bulletin 4/1 p. 8)	P300-800.EXE	POLICY: PENSION COMMISSION OF ONTARIO (PCO) - PROCEDURES submission deadlines for PCO monthly meetings (Dec 1993 - Jan 1994 Bulletin 4/2 p. 6)
L050-650.EXE	POLICY: LIFE INCOME FUND - minimum and maximum withdrawals (amendment to L050-500) (available in WordPerfect v5.1 (EXE) format only) (Dec 1993 - Jan 1994 Bulletin 4/2 p. 17)	S900-300.EXE	POLICY: SURPLUS - surplus distribution to beneficiaries as cash on wind up, effective December 17, 1992 (Aug 1993 Bulletin 4/1 p. 7)
L050-701.EXE	POLICY: LIFE INCOME FUND - spousal pre-retirement death benefit, in a LIF, O. Reg. 909, s. 18 and 19, and Schedule 1 (Aug 1993 Bulletin 4/1 p. 32)	S900-750.EXE	POLICY: SURPLUS - remaining in a wound-up plan (Dec 1993 - Jan 1994 Bulletin 4/2 p. 6)
L100-050.EXE	POLICY: LOCKING IN - shortened life expectancy (Dec 1993 - Jan 1994 Bulletin 4/2 p. 27)	T500-850.EXE	POLICY: TRANSFER RIGHTS - transfer rights outside Canada PBA 1990 s. 42 (Dec 1993 - Jan 1994 Bulletin 4/2 p. 7)
P200-125.EXE	POLICY: PENSION BENEFITS GUARANTEE FUND (PBGF) - assessment based on last certificate O. Reg. ss. 3(1), s. 37 (Aug 1993 Bulletin 4/1 p. 32)	T800-400.EXE	POLICY: TRANSFER VALUES - recalculation of transfer value not permitted in most instances O. Reg. 909, ss. 19(1), ss. 24(11.1) (Aug 1993 Bulletin 4/1 p. 30)
P200-150.EXE	POLICY: PENSION BENEFITS GUARANTEE FUND (PBGF) - assessments subject to retail sales tax, effective May 19, 1993 (Aug 1993 Bulletin 4/1 p. 8)	T800-500.EXE	POLICY: TRANSFER VALUES - updated CIA transfer value recommendations effective January 1, 1994 (Dec 1993 - Jan 1994 Bulletin 4/2 p. 24)
P200-175.EXE	POLICY: PENSION BENEFITS GUARANTEE FUND (PBGF) - assessment not to be paid by actuarial gain (Dec 1993 - Jan 1994 Bulletin 4/2 p. 26)	T800-900.EXE	POLICY: TRANSFER VALUES - where pensions indexed (Dec 1993 - Jan 1994 Bulletin 4/2 p. 25)
P200-400.EXE	POLICY: PENSION BENEFITS GUARANTEE FUND (PBGF) - determining PBGF assessment base (Dec 1993 - Jan 1994 Bulletin 4/2 p. 26)	T800-950.EXE	POLICY: TRANSFER VALUES - where plan underfunded (Dec 1993 - Jan 1994 Bulletin 4/2 p. 27)
P300-100.EXE	POLICY: PENSION COMMISSION OF ONTARIO (PCO) - PROCEDURES - applications before the Commission - decision-making process (Aug 1993 Bulletin 4/1 p. 25)	T900-300.EXE	POLICY: TRUSTEE responsibilities of fund trustee - transfer of assets from between plans, PBA, ss. 22(8)_ (Aug 1993 Bulletin 4/1 p. 32)
P300-300.EXE	POLICY: PENSION COMMISSION OF ONTARIO (PCO) PROCEDURES - computer-generated forms (Dec 1993 - Jan 1994 Bulletin 4/2 p. 28)	W100-302.EXE	POLICY: WIND UP - notice and consent requirements on partial wind up, PBA, ss. 68(2), (3), 78(2), 79, 112(3), O. Reg. 909, ss. 8(1)(b)(iii) (Aug 1993 Bulletin 4/1 p. 28)

Cumulative Index

Last year, we revised the content of the index to include summaries of announcements, administrative practices, Regulations and Commission decisions arising from hearings. This year, the index has been modified further by deleting all items published in 1990 with the exception of Commission decisions. (The summaries of court decisions will not be included in this and future indices.)

The cumulative index now includes published material for 1991, 1992 and 1993. The articles are listed alphabetically and by year in reverse chronological order. (The last cumulative index appeared in the March 1993 issue (Vol.3, Issue 4).

<u>Announcements</u>	<u>Date</u>	<u>Volume/Issue</u>	<u>Page</u>
1993			
- Booklets for Members May Be Ordered	March/93	3/4	14
- Corrections of LIF Article	March/93	3/4	14
- Cumulative Index	March/93	3/4	26
- Impact of Regulation on Financial Statement and SIP&G Filing Requirement	March/93	3/4	13
- Impact of Solvency Regulation on Financial Statement Filing Requirements	March/93	3/4	14
- Impact of Solvency Regulation on PBGF Assessments	March/93	3/4	14
- Income Tax Act (Canada) Requirement to Attach Pensions in Pay	March/93	3/4	13
- Leigh Instruments Ltd Court Decision	March/93	3/4	14
- PCO Administrative Practices and Policies Manual	March/93	3/4	14
- Plan Registration and Annual Filings - Fee Increase Changes	March/93	3/4	13
- Premier Bob Rae Announces Government Reorganization	March/93	3/4	11
- Reminder to Report Non-compliance to Superintendent	March/93	3/4	11
- Solvency Regulation Impacts AIR Filings	March/93	3/4	13
- Status of the Consolidation of the PBA and Regulation 909	March/93	3/4	11
- Basic Pension Facts - New Feature in Next Issue	August/93	4/1	9
- Bulletin Board Replaces Rapidfax Network	August/93	4/1	9
- CAG 5 and Pension Plan Document Checklist - Status of French Version	August/93	4/1	9
- CAPSA Discussion Paper - Individual Pension Plans	August/93	4/1	8
- Distribution of Surplus to Plan Beneficiaries on Wind Up	August/93	4/1	7
- LIF - Minimum and Maximum Withdrawal Tables	August/93	4/1	8
- LIF Option and Revenue Canada Update	August/93	4/1	8
- PBGF Assessments Subject to Retail Sales Tax	August/93	4/1	8
- PCO Mailing List Review	August/93	4/1	9
- PCO Members Booklet In Demand	August/93	4/1	9
- Proposed Multilateral Agreement Released for Discussion	August/93	4/1	7
- Office Consolidation of PBA and Regulation 909 Available	August/93	4/1	9
- Regulation 909 - Status of French Version	August/93	4/1	9
<u>Special Announcements:</u>			
- AIR - Schedule B Instructions and Schedule B	August/93	4/1	11
- PBGF Assessment Changes	August/93	4/1	10
- Superintendent Notice - AIR Requirements	August/93	4/1	18
- Actuarial Assumption Guidelines - Solvency Valuations	Dec/93-Jan/94	4/2	6
- Deadlines for Submission of Applications to Commission	Dec/93-Jan/94	4/2	6
- Mailing List Review and Cost Saving Measures	Dec/93-Jan/94	4/2	6
- New Commission Chair to be Appointed	Dec/93-Jan/94	4/2	6
- PCO Participates in Pension Conference	Dec/93-Jan/94	4/2	6

1992

- Accounting and Audit Advisory Committee Established	February/92	2/4	6
- AIR - PCO and Revenue Canada - Do Not Confuse	February/92	2/4	7
- Director, Secretariat Announces Departure	February/92	2/4	6
- Extension of Deadlines for 1992	February/92	2/4	4
- Fee Increases for 1992	February/92	2/4	3
- Financial Reporting Consultant Joins PCO	February/92	2/4	6
- Cumulative Index	February/92	2/4	15
- Revised Statutes of Ontario now Released	February/92	2/4	3
- Salvation Army Court Decision	February/92	2/4	5
- Solvency Valuation and the PBGF - Policy Announcement	February/92	2/4	6
- Surplus Withdrawal Regulation	February/92	2/4	4
- Teachers' & Public Service Pension Plans - Investment Regulation	February/92	2/4	5
- Advisory Committees Expanded	June/92	3/1	9
- HOOPP/OHA Court Case	June/92	3/1	10
- How Pension Legislation affects locked-in RRSP	June/92	3/1	6
- New Actuarial Services Branch Created	June/92	3/1	8
- Ontario Investment Fund	June/92	3/1	7
- PCO Policy and Research Branch	June/92	3/1	8
- Status of Proposed Auditing and Accounting Regulations	June/92	3/1	6
- Court Surplus Applications Omit PCO	October/92	3/2	7
- Information Available to Administrators	October/92	3/2	7
- Responsibilities of the Administrator	October/92	3/2	6
- Revised Checklist for Registration of Pension plans, Registered Plan Texts and Other Amendments	October/92	3/2	6
- Role of the Administrator Defined	October/92	3/2	6
- Change to Actuarial Review Procedure	December/92	3/3	11
- Selection of Administrators for Insolvencies	December/92	3/3	11

1991

- Actuarial Advisory Committee Update	March/91	2/1	7
- Extension of Deadlines for 1991	March/91	2/1	5
- Fee Increases for 1991	March/91	2/1	5
- Quebec Members (2nd notice)	March/91	2/1	7
- Sharing of Surplus - the Quebec Approach	March/91	2/1	7
- CAPSA/CPC/CIA Sponsor Fall Forum	July/91	2/2	5
- Canadian Pension Conference - Launches Lecture Series	July/91	2/2	6
- New Superintendent Appointed	July/91	2/2	4
- Pregnancy and Parental Leave - Plan Amendment Required	July/91	2/2	4
- Quebec Supplemental Pension Plans Act - Ontario Plans With Quebec Members (3rd notice)	July/91	2/2	5
- Pregnancy and Parental Leave - Correction	November/91	2/3	10
- Revised AIR Now Law	November/91	2/3	10
- Staff Appointments	November/91	2/3	11

Administrative Practices

1993

- Refunds of Employer Overpayment	March 93	3/4	15
- Contribution In Kind	August 93	4/1	27
- Failure to Remit Member Contributions	August 93	4/1	23
- Pre-hearing Conference Procedures	August 93	4/1	23
- Surplus Attributable to Employee and Employer Contributions On Plan Wind Up	August 93	4/1	27
- Written Notice of Proposal for Partial Wind Up	August 93	4/1	23
- Age-related Benefit Formulae Under Subsections 11(1) & 11(4)	Dec/93-Jan/94	4/2	14

- Class of Employee - Clarification	Dec/93-Jan/94	4/2	12
- Guideline - Notice of Wind Up of a Pension Subsection 68(2)	Dec/93-Jan/94	4/2	15
- Merger of Plans - Merger Policy	Dec/93-Jan/94	4/2	8

1992

- Change of Carrier of Plan Assets	February/92	2/4	10
- Extension of Contribution Deadlines in Active DB Plans	February/92	2/4	10
- Distribution of Surplus on Plan Wind Ups	June/92	3/1	12
- Early Retirement Windows	June/92	3/1	11
- Employer Contributions Based on Members' RRSP Contributions	October/92	3/2	7
- Distribution of Surplus to an Employer on Wind up	October/92	3/2	8
- Identifying a Successor Pension Plan Under Section 80	October/92	3/2	8
- Procedures for Applications Pursuant to Subsection 7a(2)	October/92	3/2	13

1991

- Wind-up Checklist to be Filed	March/91	2/1	1
- Benefits Improvements in Ongoing Plans	July/91	2/2	10
- Wind-up Checklist Now Available	July/91	2/2	9
- Actuarial Reports and Cost Certifications - New Submission	November/91	2/3	13
- Conversion from DB to DC - Guidelines	November/91	2/3	13
- Refund of Employee Contributions - Guidelines	November/91	2/3	13
- Surplus Withdrawal Application on Wind Up - Guidelines	November/91	2/3	12

Questions & Answers

1993

- LIF - Other Jurisdictions	March 93	3/4	17
- LIF - Survivor Benefit Entitlements	March 93	3/4	16
- Portability of Locked-in Benefits	March 93	3/4	17
- Surplus Withdrawal Ongoing and on Termination	March 93	3/4	17
- Transfer Benefits to Locked-in RRSP	March 93	3/4	17
- Contribution Suspension for Employees	August 93	4/1	31
- Investment - Limited Partnership	August 93	4/1	31
- Late Filings Fees for Defined Benefit Plans	August 93	4/1	32
- LIF - Surviving Spouse Entitlement	August 93	4/1	32
- PBGF Assessment - Cost Certificates as Last Report	August 93	4/1	32
- Plan Funding - Financial Statements	August 93	4/1	30
- Recommendations for the Computation of Minimum Transfer Values for Pensions	August 93	4/1	30
- Solvency Deficiencies - Negative Balance	August 93	4/1	33
- Transfer of Assets From Plan to Plan	August 93	4/1	32
- Transfer of Plan Assets to Purchaser	August 93	4/1	31
- AIR Filed Before Wind Up Approved	Dec/93-Jan/94	4/2	27
- Commuted Value to Former Member When Plan is Underfunded	Dec/93-Jan/94	4/2	27
- Commuted Value When Joint and Survivor Benefits are Waived	Dec/93-Jan/94	4/2	27
- Determining Member's Disabilities	Dec/93-Jan/94	4/2	27
- Elimination of Indexing	Dec/93-Jan/94	4/2	25
- Employer Contribution Holidays Between Valuation Reports	Dec/93-Jan/94	4/2	25
- Generation of PBA Forms	Dec/93-Jan/94	4/2	28
- Indexed Benefits at Termination	Dec/93-Jan/94	4/2	25
- PBGF Assessment - Past Service Liabilities	Dec/93-Jan/94	4/2	26
- PBGF Assessment Costs Paid by Actuarial Gains	Dec/93-Jan/94	4/2	26
- PCO Submissions - Confidentiality	Dec/93-Jan/94	4/2	26
- Revising Election Reports	Dec/93-Jan/94	4/2	26
- Sole or Last Member Terminates Employment - Subsection 70(2)	Dec/93-Jan/94	4/2	26
- Temporary Suspension of Employer Contributions in a Defined Contribution Plan	Dec/93-Jan/94	4/2	27
- Union Membership as a Requirement for Benefit Improvements	Dec/93-Jan/94	4/2	27

- Conversion - Member Options	February/92	2/4	11
- Derivative Securities	February/92	2/4	11
- "Ethical" Investing	February/92	2/4	11
- PBGF Assessment as Administrative Expense	February/92	2/4	11
- PBGF Assessment When Employer Insolvent	February/92	2/4	11
- Pensions During Wind Up	February/92	2/4	11
- Pregnancy & Parental Leave - Conditional Contributions	February/92	2/4	11
- Pregnancy & Parental Leave - Continuation of Contributions	February/92	2/4	11
- Pregnancy & Parental Leave - Plan Sponsor's Obligations	February/92	2/4	11
- Pregnancy & Parental Leave - Whose Legislation	February/92	2/4	11
- Year's Maximum Pensionable Earnings - 1992 Figure	February/92	2/4	10
- Collecting Unremitted Contributions	June/92	3/1	12
- "Finders fees" - Are They Payable Out of Pension Fund	June/92	3/1	12
- Pension Plan with No Members - Wind up Requirements	June/92	3/1	12
- RRSP - Is Interest Locked In	June/92	3/1	12
- Granting Contribution Holidays From Surplus	October/92	3/2	14
- Pre and Post 1987 Vesting and Locking in Rules	October/92	3/2	14
- PCO Authority to Charge Interest on Late AIR Filing Fees	October/92	3/2	14
- Status of Employee Contributions - Deduction to Remittance	October/92	3/2	14
- Life Annuity - Use of Sex Differentiated Mortality Tables	December/92	3/3	17
- RRSP - When Can They be Annuitized	December/92	3/3	17
- RRSP - Annuitizing Before Maturity Date of Investment	December/92	3/3	17

1991

- Bridge Benefit - What is it	March/91	2/1	14
- Information - What Must Administrator Automatically Provide	March/91	2/1	13
- Information - What Must Administrator Provide on Request	March/91	2/1	13
- Information - Who Can Get Information	March/91	2/1	13
- Interest - Average Fund Rate	March/91	2/1	13
- Interest - Minimum and Maximum	March/91	2/1	13
- Interest - Policy for Crediting Employee Contributions	March/91	2/1	13
- Mandatory Retirement - Effect of Supreme Court Decision	March/91	2/1	14
- Normal Retirement Date - What is it	March/91	2/1	14
- Plan Records - How Long to Keep	March/91	2/1	14
- Policy Statement 2 (Purchase & Sale) - does it apply to Corporate	March/91	2/1	12
- Regulatory and Superintendent's Forms - Difference	March/91	2/1	12
- Unlocking Funds - Leaving the Country	March/91	2/1	13
- Void and Adverse Amendments - Difference	March/91	2/1	13
- Additional Voluntary Contributions - Refund to Active Members	July/91	2/2	10
- Administrative Expenses - Negotiating Fees	July/91	2/2	10
- Administrative Expenses - Paid on a Regular Basis	July/91	2/2	10
- Amendment - Relating to Restated Plan Text	July/91	2/2	10
- Commuted Value - When to Compare Contributions	July/91	2/2	10
- Compliance Assistance Guideline #4 - Surplus	July/91	2/2	11
- Late Filing Fees	July/91	2/2	11
- Locked-in RRSPs - Earlier to Purchase Life Annuity	July/91	2/2	11
- Marriage Breakdown - additional Choices for non-member Spouse	July/91	2/2	11
- Marriage Breakdown - Choices for Spouses	July/91	2/2	11
- Mortality Tables - Which to Use	July/91	2/2	10
- PBGF Assessment Fees	July/91	2/2	11
- Refund of Employee Contributions	July/91	2/2	11
- Compliance Assistance Guideline #4 - Surplus - Clarification	November/91	2/3	15
- Documents on File with PCO - Other Jurisdictions	November/91	2/3	15
- Late Filing Fees - Forms Not Received From PCO			
- Reorganization	November/91	2/3	15
- Province of Registration - When to Change	November/91	2/3	15

Commission Decisions

1993

- Stelco P.B.A. R.S.O. 1990, Subsection 89(8) (Preliminary Hearing Decision dated December 4, 1992)	March 93	3/4	24
- Stelco P.B.A. R.S.O. 1990, Subsection 89(8) (Partial Wind Up Decision dated July 7, 1993)	August 93	4/1	40
- Stelco P.B.A. R.S.O. 1990, Subsection 89(8) (Veinot Decision dated March 18, 1993)	August 93	4/1	48
- Western Star Trucks Inc	Dec/93-Jan/94	4/2	35

1992

- ArrowHead Metals Ltd. (decision under sections 79 and 80 of the PBA, 1987, and paragraph 7a(2)(c) of Reg.708/87	June/92	3/1	19
- Brewers Retail Inc. (decision under section 87 of the PBA, R.S.O. 1990)	October/92	3/2	24
- Stelco Inc. (decision under section 69 of the PBA, R.S.O. 1990)	October/92	3/2	29
- S. Allan and Price Waterhouse Administrator of the MCC Plan, and Massey Ferguson Industries Ltd. (decision under section 89 of the PBA, R.S.O. 1990)	October/92	3/2	36
- Saynor Varah Inc. and Affiliated Companies (decision under sections 78 and 79 of the PBA, R.S.O. 1990, c.P.8 and 7a(1)(b) of Reg. 743/91)	December/92	3/3	21

1991

- General Motors of Canada (decision under section 88 of the PBA, 1987	March/91	2/1	17
- Cluett Peabody	July/91	2/2	15
- CUPE, Ontario Nurses Association, OPSEU and SEIU versus Ontario Hospital Association	November/91	2/3	16

1990

- Otis Canada Inc., pension plan for Draftsmen Local 164 (decision under subsections 79(1) and 80(4) of the PBA, 1987 and clause 7a(2)(c) of the Regulation	February/90	1/1	16
- Otis Canada Inc., pension plan for Steel Workers Local 7062 (decision under subsection 82(1) of the PBA, 1987	February/90	1/1	11
- Hospitals of Ontario Pension Plan (decision under section 8(1)(e) of the PBA, 1987	December/90	1/4	12

Superintendent of Pensions - Notices and Orders

Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, R.S.O. 1990, c. P.8 [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) *The Pension Plan for the Non-Executive Employees of MacKinnon-Moncur Limited* (C-12646), December 22, 1993
- 2) *Retirement Plan for the Employees of Bayweb Limited and Muskoka Web Limited* (C-17781), Amended January 14, 1994
- 3) *Staff Pension Plan for the Employees of Contract Hardware Specialists (1974) Limited* (C-103908), January 31, 1994
- 4) *T.A.G. Apparel Group Inc. Pension Plan for Salaried Employees of Penmans Apparel Inc.* (C-101674), February 8, 1994
- 5) *T.A.G. Apparel Group Inc. Pension Plan for Hourly Paid Staff of Penmans* (C-101676), February 8, 1994
- 6) *T.A.G. Apparel Group Inc. Pension Plan for Van Raalte Employees* (C-100740), February 9, 1994
- 7) *Pension Plan for Management, Supervisory, Sales and Clerical Employees of Harvey Woods Limited* (C-13692), February 9, 1994
- 8) *T.A.G. Apparel Group Inc., Pension Plan for Salaried Employees of Buckeye Industries Ltd.* (C-14278), February 10, 1994
- 9) *Pension Plan for Employees of A.C. Wickman Machine Tool, a Division of Williams & Wilson Ltd.* (C-104425), February 21, 1994

Orders

The Superintendent issued Orders, pursuant to section 69 of the PBA [Wind-up Orders], as follows (effective date of wind up and date of order indicated, respectively):

- 1) *Imperial Optical Company Ltd. Employees Pension Plan* (C-17745), (effective December 14, 1992), December 1, 1993
- 2) *Retirement Plan for the Employees of Lomar Mechanical Corporation Limited* (C-103969), (effective December 31, 1990), December 10, 1993

- 3) *The Pension Plan for Paja Group Inc.* (C-15016), (effective December 14, 1992), December 10, 1993
- 4) *Pension Plan for the Employees of O'Neill-Bernhardt Limited* (C-13683), (effective January 31, 1991), December 10, 1993
- 5) *Revised Employees' Pension Plan for Employees of Matrix Steel Corp.* (C-19997), (effective December 17, 1992), December 10, 1993
- 6) *The Pension Plan for Standard Optical Company Limited* (C-18078), (effective December 14, 1992), January 26, 1994
- 7) *Retirement Plan for the Employees of Delmar Contracting Limited* (C-8691), (effective April 23, 1992), January 26, 1994
- 8) *Retirement Income Plan for Salaried Employees of Savage Shoes Limited* (C-18831), (effective May 29, 1989), January 26, 1994
- 9) *Pension Plan for Hourly Employees of Savage Shoes Limited* (C-17059), (effective May 29, 1989), January 26, 1994
- 10) *Imperial Optical Company Ltd. and Subsidiary and Affiliated Companies Pension Plan* (C-8230), (effective December 14, 1992), February 8, 1994

Tribunal Activities

This section summarizes matters related to the Pension Commission of Ontario.

1994 Commission Meeting Dates

The Pension Commission will convene on the following Thursdays in 1994:

March 24, April 28, May 26, June 23, July 21, September 22, October 20, November 17, December 15, 1994. Please note: the August 25th meeting has been cancelled.

Deadlines for the Submission of Applications to the Commission

The announcement that appeared in the Dec '93 - Jan '94 issue of the *PCO Bulletin* which set out Commission meeting dates and submission deadline dates continues in effect **except for the submission deadline of May 25 for the August 25 Commission meeting which, as noted above, has been cancelled.** Those making submissions for consideration by the Commission at its monthly meetings should plan accordingly.

PCO Board Members

The following members comprise the Commission:

Eileen E. Gillese, Acting Chair
Darcie L. Beggs
M. David R. Brown
Kathryn M. Bush
Donald G. Collins
Robert F. Nickerson
Joyce A. Stephenson
Monica J. Townson

Hearings Before the Commission

General Motors of Canada Limited - Canadian Hourly-Rate Employees Pension Plan

A decision dated January 25, 1991 with respect to the preliminary hearing on standing held November 1, 1990 was published March 1991, Vol.2, Issue 1. Following a pre-hearing conference January 25, 1991, the hearing on the substantive issues commenced April 8 - 11, 16 - 18, May 30, 31, August 19, 20, October 23 - 25, 1991. On May 20, 1992, the hearing was adjourned sine die.

Pension Plan for Designated Employees of Tate Access Floors Inc. (C-103686)

The Commission has been requested to review a proposal dated March 31, 1992 by the Superintendent of Pensions to make an Order that the plan be wound up. This matter has been adjourned sine die on consent.

Consolidated GenCorp Canada Inc. Hourly Pension Plan (C-14498)

Consolidated GenCorp Canada Inc. Salaried Pension Plan (C-6895)

GenCorp Canada Inc. requested hearings with respect to a Notice of Proposal to Make an Order on each of the above plans issued by the Superintendent of Pensions March 3, 1993 pursuant to s. 69 of the PBA that the plans be wound up in part effective September 27, 1991. A pre-hearing conference held October 1, 1993 joined the two hearings. Hearing dates: May 2, 3, 4, 10, 11, and 12, 1994. Argument: June 7, 8, and 9, 1994.

Imperial Oil Limited Retirement Plan (C-8884) and Pension Plan for Employees of McColl-Frontenac Inc. (C-4280) (the "Plans")

Counsel for a group of former employees is appealing, under s. 89 of the PBA, the Decisions of the Superintendent of Pensions dated May 7 and 18, 1993 regarding Amendment of August 1991 to Section 4.3 of the Plans. A pre-hearing conference was held October 28, 1993 and adjourned sine die on consent.

International Playing Card Company Limited Pension Plan for Bargaining Unit Employees (C-4609)

Application pursuant to ss. 8(2) of Reg. 909, R.R.O. 1990, as amended by O.R. 743/91 for the consent of the Commission to a payment of surplus to International Playing Card Company Limited. This application follows a hearing before Mr. Justice Carter which was adjourned October 21, 1992 until PCO consent was received. Pre-hearing conference held July 29, 1993. Based on written submissions, a panel of the Commission consented to the application. The Decision is published in this issue of the *PCO Bulletin* at page 51.

TIE/communications Canada Inc. Pension Plan for Employees (C-9884)

A pre-hearing conference was held January 7, 1994, before Ms. K. Bush, presiding member, regarding an application for Commission consent to the payment of surplus on wind up to TIE/communications Canada Inc. Hearing dates to be set.

Commission Decisions - Applications Approved Since November, 1993

Applications Approved Under s. 8 of Reg. 909, R.R.O. 1990, as amended, and ss. 78(1) of the PBA - Request for Consent to Payment of Surplus Prior to a Court Application

At the Commission meeting held December 16, 1993, the Commission consented pursuant to ss. 78(1) of the PBA and clause 8(2) of Reg. 909, as amended, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) Pension Plan for Toronto Hourly-Rated Employees of Central Soya of Canada Ltd. (C-19745)

Payment of surplus to Central Soya of Canada Ltd. from the Pension Plan for Toronto Hourly-Rated Employees of Central Soya of Canada Ltd., Registration Number C-19745, in the amount of \$135,786 as at May 6, 1991.

b) Contributory Pension Plan for Salaried Employees of the Griffith Mine, Stelco Inc. (C-12471)

Payment of surplus to The Griffith Mine, formerly a Division of Stelco Inc. from the Contributory Pension Plan for Salaried Employees of the Griffith Mine, Stelco Inc., Registration Number C-12471, in the amount of \$4,068,919 as at June 30, 1993.

c) *Pension Plan for Hourly-Paid Employees of Robertshaw Controls Canada Inc., Oakville Division (C- 14442)*

Payment of surplus to Robertshaw Controls Canada Inc. from the Pension Plan for Hourly-Paid Employees of Robertshaw Controls Canada Inc., Oakville Division, Registration Number C-14442, in the amount of \$385,908.15 as at June 30, 1993, which consent shall not be effective until the administrator satisfies the Commission that all benefits (including a proposed adjustment to certain members amounting to \$4,199.48 as of November 30, 1993), benefit enhancements, and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Applications Under clause 8(1)(b) of Reg. 909, R.R.O. 1990 (as amended by O. Reg. 743/91) and ss. 78(1) of the PBA - Surplus Withdrawal on Plan Wind Up

At the Commission meeting held November 25, 1993, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows.

a) *Pension Plan for Employees of Wm. Parker Planning Consultants Inc. (C-15954)*

Payment of surplus to Wm. Parker Planning Consultants Inc. from the Pension Plan for Employees of Wm. Parker Planning Consultants Inc., Registration Number C-15954, in the amount of \$101,852 as at April 30, 1992 which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

b) *The Employees Retirement Plan of Hoskins Alloys of Canada Limited (C-11558)*

Payment of surplus to Hoskins Alloys of Canada Limited from the Employees Retirement Plan of Hoskins Alloys of Canada Limited, Registration Number C-11558, in the amount of \$115,296 as at September 1, 1990, the effective date of the partial wind up, which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

c) *Retirement Income Plan of United Dominion Industries Limited (C-4170)*

Payment of surplus to United Dominion Industries Limited from the Retirement Income Plan of United Dominion Industries Limited, Registration Number C-4170, in the amount of \$27,300,000 as at July 31, 1993, which consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Reasons for Decision will be published when available.

d) *Pension Plan for Employees of Head/Tyrolia Sports Canada Inc. (C-103904)*

Deny Commission consent to the payment of surplus to Head/Tyrolia Sports Canada Inc. from the Pension Plan for Employees of Head/Tyrolia Sports Canada Inc., Registration Number C-103904., in the amount of \$1,449,256 as at July 31, 1992. The statutory precondition of notice was not met as the employee notice issued under subsection 78(2) of the PBA did not contain full disclosure.

At the Commission meeting held January 27, 1994, pursuant to ss. 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows.

a) *Robert E. Skelly Limited Executive Pension Plan (C-15980)*

Payment of surplus to Robert E. Skelly Limited from the Robert E. Skelly Limited Executive Pension Plan, Registration Number C-15980, in the amount of \$1,057,080 as at December 1, 1991.

b) *University of Toronto Pension Plan for Designated Employees (C-100892)*

Payment of surplus to University of Toronto from the University of Toronto Pension Plan for Designated Employees, Registration Number C-100892, in the amount of \$17,595 as at July 1, 1990.

c) *Pension Plan for Employees of Recognition Canada Inc. (C-15315)*

Payment of surplus to Recognition Canada Inc. from the Pension Plan for Employees of Recognition Canada Inc., Registration Number C-15315, in the amount of \$445,754 as at May 1, 1993.

d) *Jordan & Ste. Michelle Cellars Ltd. Retirement Plan for Salaried Employees (C-2455)*

Payment of surplus to 151435 Canada Ltd. (formerly Jordan & Ste. Michelle Cellars Ltd.) from the Jordan & Ste. Michelle Cellars Ltd. Retirement Plan for Salaried Employees, Registration Number C-2455, in the amount estimated to be \$975,231.71 as at July 1, 1993, (which is 50% of the surplus of \$1,659,774 as at June 30, 1986 plus investment earnings to the date of payment less \$100,000 expenses). This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement and any other payments to which members, former members and any other persons are entitled, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Application for Surplus Withdrawal Matters - Continuing Pension Plan: ss. 78(1) PBA & s.10 of Regulation 909, R.R.O. 1990, as amended

At the Commission meeting held December 16, 1993, pursuant to ss. 78(1) of the PBA and s.10 of the Reg., the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment from a continuing plan:

a) *Pension Plan for Designated Employees of Lawrence A. Brenzel Limited (C-15645)*

In light of the fact that the requirement of clause 79(1)(b) had been met, the Commission consented to payment of surplus from a continuing pension plan to Lawrence A. Brenzel Limited from the Pension Plan for Designated Employees of Lawrence A. Brenzel Limited, Registration Number C-15645, in the amount of \$1,271,000 as at April 30, 1992.

Applications Approved under ss. 63(7) & (8) of the PBA - Return of Member Contributions

At the Commission meeting held January 27, 1994, the Commission consented pursuant to ss. 63(7) & (8) of the PBA to the refund of member required contributions as follows:

a) *Pension Plan for Employees of Honda Canada Inc. (C-12135)*

Refund of Class 2 members' required contributions from the Pension Plan for Employees of Honda Canada Inc., Registration Number C-12135, in the aggregate amount of \$130,422 as at November 1, 1991 plus credited interest to the date of payment on condition that the employer will fund the going concern deficit of \$228,781, as calculated by a valuation completed at November 25, 1992, in one lump sum prior to or at the time of the refund.

Applications Approved under s. 105 and ss. 78(4) of the PBA - Extension of Time and Return of Overpayment

At the Commission meeting held December 16, 1993, the Commission consented pursuant to s. 105 of the PBA to an extension of time for filing an application and pursuant to ss. 78(4) of the PBA to the refund of overpayments as follows.

a) *The Pension Plan for Employees of NORR Group Consultants Limited and Participating Companies (C-11302)*

1. Refund of an overpayment in the amount of \$258,000 to NORR Group Consultants Limited from The Pension Plan for Employees of NORR Group Consultants Limited and Participating Companies, Registration Number C-11302.
2. (a) Extend the time limit for filing an application for the refund of an overpayment in the amount of \$89,785; and,
(b) Refund of an overpayment in the amount of \$89,785.

At the Commission meeting held January 27, 1994, the Commission consented pursuant to s. 105 of the PBA to an extension of time for filing an application and pursuant to ss. 78(4) of the PBA to the refund of an overpayment as follows:

a) *Hodgson Robertson Laing Limited Pension Plan for Employee J. Warren Laing (C-19064)*

1. Extend the time limit from the plan's fiscal years 1988 and 1989 to its 1993 fiscal year for filing an application for the refund of an overpayment of \$26,771 in 1988 and \$26,771 in 1989;
2. Refund of an overpayment in the amount of \$26,771 made in 1988 and \$26,771 made in 1989 plus investment earnings earned on such amounts to the date of payment from the Hodgson Robertson Laing Limited Pension Plan for Employee J. Warren Laing, Registration Number C-19064.

Application Approved under s. 105 PBA - Request for Extension of Time Limit Imposed by ss. 67(1) of Reg.

At the Commission meeting held November 25, 1993, the Commission consented to an extension of the time limit imposed on conforming pension fund investments pursuant to subsection 67(10) of the PBA.

a) *Pension Fund for Salaried Employees of Canada Forgings Inc. (C-19824) and Pension Fund for Members of CAW Local 125 of Canada Forgings Inc. (C-7220)*

Consent to an extension to October, 1996, of the time limit imposed on conforming pension fund investments pursuant to subsection 67(10) of Regulation 909, R.R.O. 1990, with respect to the Pension Fund for Salaried Employees of Canada Forgings Inc., Registration Number C-19824, and the Pension Fund for Members of CAW Local 125 of Canada Forgings Inc., Registration Number C-7220, based on the amended application for the redemption of 25,000 preferred shares as outlined in the following schedule:

January, 1995	3,000 shares
April, 1995	3,000 shares
July, 1995	3,000 shares
October, 1995	3,000 shares
January, 1996	3,000 shares
April, 1996	3,000 shares
July, 1996	3,000 shares
October, 1996	4,000 shares

Pension Benefits Guarantee Fund ("PBGF")

On November 25, 1993, the Commission, pursuant to ss. 90(1) of the PBA, issued Notices of Proposal to make a Declaration pursuant to ss. 83(1) of the PBA that the PBGF applies to the following pension plans:

- a) *Pension Plan for Hourly Employees of Savage Shoes Limited (C-17059)*

On January 27, 1994, the Commission, pursuant to ss. 83(1) of the PBA, declared that the PBGF applies to the following pension plans:

- a) *Pension Plan for Hourly Employees of Savage Shoes Limited (C-17059)*
- b) *Sound Insight Limited Pension Plan for Executive Employees (C-18819)*

On November 25, 1993, the Commission, pursuant to ss. 34(7) of Reg. 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under s. 34 of the Reg. Any money not required to provide such benefits shall be returned to the PBGF.

- a) *The Pension Plan of Union Drawn Steel Company Limited Effective September 1, 1955 (C-5905)*

Allocate from the PBGF and pay to The Pension Plan of Union Drawn Steel Company Limited Effective September 1, 1955, Registration Number C-5905 (the "Pension Plan"),

- 1) a payment not to exceed a total of \$45,961.04 in respect of pensions provided under the Pension Plan for the period from March 1, 1993 to October 31, 1993; and
- 2) monthly payments not to exceed \$6,200 for pensions provided after November 1, 1993.

On January 27, 1994, the Commission, pursuant to ss. 34(7) of Reg. 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under s. 34 of the Reg. Any money not required to provide such benefits shall be returned to the PBGF.

- a) *Sound Insight Limited Pension Plan for Executive Employees (C-18819)*

allocate from the PBGF and pay to the Sound Insight Limited Pension Plan for Executive Employees, Registration Number C-18819, the amount of \$43,415.01 as at December 31, 1993 plus interest at the rate of 10.5% per annum to the date of payment from the PBGF.

Decisions

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8

AND

IN THE MATTER OF an Application by International Playing Card Company Limited for the consent of the Pension Commission of Ontario to the payment of surplus from the International Playing Card Company Limited Pension Plan for Bargaining Unit Employees, Registration Number C-4609

BETWEEN:

International Playing Card Company Limited

Applicant

AND

National Automobile, Aerospace and Agricultural Implement
Workers Union of Canada (CAW - Canada) and its Local 195

Respondent

Pre-hearing Conference: Eileen E. Gillese, Vice Chair
Held: July 29, 1993, Toronto, Ontario

Hearing Panel: M. Joseph Regan, Chair
Kathryn Bush
Donald Collins
Joyce Stephenson
Monica Townson

Reasons for Decision

Nature of the Application

International Playing Card Company Limited (the "Applicant") applied to the Pension Commission of Ontario (the "Commission") for consent to payment of the surplus in the International Playing Card Company Limited Pension Plan for Bargaining Unit Employees C-4609 (the "Plan") in the amount of \$749,314 as at September 30, 1989, plus investment earnings thereon to the date of payment.

The application was brought pursuant to sections 78 and 79 of the Pension Benefits Act, R.S.O. 1990 c. P.8 (the "Act") and subsection 8(2) of Regulation 909, R.R.O. 1990, as amended. The Applicant had applied to the Ontario Court (General Division) for consent to the return of surplus. Mr. Justice Carter adjourned the matter on October 21, 1992 until the consent of the Commission was received.

A pre-hearing conference held at the offices of the Commission resulted in an order dated the 5th day of August, 1993, that this matter be resolved upon the basis of written submissions on the following two issues:

Issue No. 1 "Is the Notice provided at Tab 18 of the Application defective? If so, in light of all the circumstances, are the defects such that the Notice must be reserved and the application process redone?"

and

Issue No. 2 "Is the surplus reversion provision found in the 1964 Plan valid? It was agreed by the parties that if the provision in the 1964 Plan was valid, the Applicant had met the requirements of subsection 79(3)(b)."

ISSUE #1 "Is the Notice provided at Tab 18 of the Application defective?"

The National Automobile, Aerospace and Agricultural Implement Workers Union of Canada, and its Local 195 and the bargaining unit employees (the "Respondent") submits that the Notice which the Applicant served pursuant to subsection 78(2) of the Act was deficient as it failed to refer to two earlier pension documents. The Applicant submits that there is no real or substantive issue to be decided with respect to the form of the Notice as the firm representing the Respondent had represented the Respondent, the only legal bargaining agent of the members of the Plan, since at least February of 1990,

2. Alpha Allocations - Defined Benefit & Multi-Employer Plans - (Plans with less than 250 members)

Alpha Range	Pension Officer		Alternate	
A -BRI	David Allan	314-0612	Elizabeth Carter	314-0604
BRO -COM	Steve Young	314-0646	Larry Murray	314-0644
CON -EZZ	Alain Malaket	314-0609	John Graham	314-0647
F -HAZ	Larry Murray	314-0644	Steve Young	314-0646
HEA -KMZ	William Qualtrough	314-0641	Sandy Malloy	314-0636
KNA -MOQ	Elizabeth Carter	314-0604	David Allan	314-0612
MOR -PNZ	Stanley Chan	314-0635	Maureen Barber	314-0645
POL -SHE	Maureen Barber	314-0645	Stanley Chan	314-0635
SHI -TORO	Sandy Malloy	314-0636	William Qualtrough	314-0641
TORR *	John Graham	314-0647	Alain Malaket	314-0609

*Companies with alpha-numeric names.

3. Alpha Allocations - Defined Contributions Plans

Alpha Range	Pension Analyst		Alternate	
A -Canada	Doug Kaye	314-0605	Debra Bain	314-0607
Canadian-COK	Margaret Fennell	314-0600	Claude De Souza	314-0608
COL-DIL	Claude De Souza	314-0608	Margaret Fennell	314-0600
DIM -FLO	Debra Bain	314-0607	Doug Kaye	314-0605
FLU -HAL	Margaret Fennell	314-0600	Claude De Souza	314-0608
HAM -JAL	Merle Corbie	314-0637	Lynn Barron	314-0639
JAM -MIL	Wynnell DeLandro	314-0603	John Staric	314-0596
MIN -ONT	Claude De Souza	314-0608	Margaret Fennell	314-0600
ONU -RAL	Lynn Barron	314-0639	Merle Corbie	314-0637
RAM -SHA	John Staric	314-0596	Wynnell DeLandro	314-0603
SHE -THA	Merle Corbie	314-0637	Lynn Barron	314-0639
THE -VUL	Lynn Barron	314-0639	Merle Corbie	314-0637
VUM *	John Staric	314-0596	Wynnell DeLandro	314-0603

4. Alpha Allocations - Pension Plans of Insolvent Companies

Alpha Range	Coordinator		
A -E	Jai Persaud	314-0595	
F -P	Robin Gray	314-0593	
Q *	Lawrence Contant	314-0602	

*Companies with alpha-numeric names

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BULLETIN

Winter 1995

Includes an Update
on the PCO Conference
#149 on the BBS

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The PCO Bulletin is published by the Pension Commission of Ontario, which is located at 250 Yonge Street, (just south of Dundas Street), 29th Floor, Toronto, Ontario M5B 2N7 (416) 314-0660 fax (416) 314-0650

Mailing List Update - Fast Fax Your Personnel or Address Changes to 416-314-0650

We continue to need your help in maintaining an accurate *PCO Bulletin* Mailing List. Please inform us of any change that may affect efficient and economical delivery of the *PCO Bulletin*. When making notification of a change, we ask that you include all information from the *PCO Bulletin* mailing label on your letterhead and note the correction or revision. Identify whether you are the plan sponsor, administrator, consultant etc. Then forward the information to Communications - *Mailing List Update* by mail or by fax (as noted above). Thank you for your assistance.

* * *

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The Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 (as amended), the terms of the pension plan and the policy and practices of the PCO should be considered in determining specific legislative and other legal requirements and professional advice should be sought.

ISSN 1180-1565

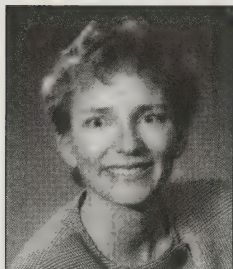
PENSION PLAN SURVIVAL AND THE PCO - A TWO WAY STREET

A Regulator Speaks Out On The Future Of The Pension Industry

By Eileen E. Gillese

Chair, Pension Commission of Ontario

This article was first published in Benefits and Pensions Monitor, November/December 1994 issue and is reprinted with permission.



What is the future of private pension plans in 1995 and beyond? That depends upon the reason for their decline in recent years. If I accept even a fraction of the comments I hear and read daily, I would hazard the following prediction: if readers were polled right now, a majority of them

would state that the biggest factor in the decline of private pension plan coverage is over-regulation. And the solution to over-regulation? Again, I predict that a majority would respond with the statement "*reform the legislation*".

Allow me to offer a different response. You and I have at least as much to contribute to the solution as do the legislatures - you as an active member in the pension industry and I as a regulator.

The cries of incredulity are audible already...how can those in the pension industry have anything to do with the problems of over-regulation?

The answer lies, in part, by what is meant by the word "over-regulation", for it apparently blankets a multitude of sins. Sometimes it is a shorthand description of a regulatory agency that is seen to be unresponsive, bureaucratic and inefficient. The merger policy created by the Pension Commission of Ontario (PCO) springs to mind! At other times, it is the epithet used to describe particular aspects of a piece of legislation that is seen as overly burdensome.

In still more cases, it refers to the numerous pieces of pension legislation in Canada, and the myriad of inconsistencies among them.

Where the allegation of over-regulation is directly tied to legislation, I think we can assume the best. The recent regulation changes to the Ontario legislation have remedied the inconsistencies between the Act and the federal *Income Tax Act* and I would suggest, show that governments are not immune to pleas for rationality. Legislative action, while necessary, is not sufficient in itself to reverse the decline in plan coverage. And that is where you and I come into the picture. To begin, we must recognize our respective roles and responsibilities, and how they have changed since the passage of the 1987 Act.

Defining Roles

What is the role of the regulator? To administer the Act and regulations in an efficient, timely and fair manner. The types of criticisms levied against the PCO, which are seen as contributing to the problem of over-regulation, are linked to problems of efficiency and timeliness. I would be the first to admit that the stinging criticisms levied against the Commission in years gone by were warranted.

As a direct response to those criticisms, and in an effort to meet our responsibilities, the Commission was radically restructured, and the details of the restructuring were widely communicated. Some of the changes include:

- imposing deadlines for the turnaround of all routine processing
- streamlining the decision-making processes
- assigning one officer to each plan for better accountability and consistency
- establishing a more efficient inquiries line. Plan-specific "general" inquiries are answered by the officer or analyst for the plan
- establishing policies for major decision-making areas, such as mergers, surplus, withdrawal, partial wind-up and early retirement windows



- indexing policies and interpretations of smaller matters in the *PCO Bulletin* "Questions and Answers". These were made available internally and externally both in hard copy and electronic form
- hearing matters before the Commission more quickly and rendering decisions more promptly in accordance with established procedures

Are we now able to sit back and say that all is well? I would not suggest that. But this much is certain - the restructuring is pointless if the attitude in the industry continues to blame the Commission for all delays. Frankly, many of the causes for delay are attributable to factors over which you have direct control.

First, our staff spends much time working on inadequate or incomplete materials that have been filed. The assistance of staff on such matters as surplus applications and notices, adverse amendments notices, LIF documents, plan texts and early retirement windows is notorious, and it will lessen. It will lessen largely because it is not the role of the staff to ensure that filings are done correctly. That is the responsibility of the administrator.

It is understandable that consultants want comfort and/or pre-approval of documents, reports and applications. However, routine staff work suffers as a result of offering such assistance, and ultimately delays arise. For that reason and many others, the degree of support offered by our staff in the past cannot continue.

Overcoming Preconceptions

The second matter over which the industry has control is its perception and attitude toward the Commission. The idea of inefficiency results in inefficiency - it is a self fulfilling prophecy. Over the past several months, all complaints of which I, the Superintendent or senior staff have become aware of have been looked into. Seldom have the complaints been justified. In some cases, problems arose because the Commission responded to one member of the pension team, such as the consultant, and the consultant failed to advise the other players on his or her team. Whose "fault" was it? Who cares? The problem was, in part, created because the perception that the Commission was inefficient meant that the administrator did not look into the matter for a number of months.

Let the Commission "grow up". It is a body which has gone through the growing pains associated with responding to the radical changes of the 1987 Act. It can be responsive, so give it a chance. It will not be perfect, but it is a far different organization than it was even three years ago. The roles of the regulator and those in the pension industry have undergone profound changes since the passage of the 1987 legislation, and we have to work at (re)establishing good lines of communication based on acceptable expectations of one another.

I write these thoughts with some misgivings. They can be dismissed as self serving, defensive or worse. I intend none of these. Instead, they are an invitation. Let us all concede that the goal of rationalizing the pension legislation is important, and that we must do everything in our power to achieve it. Then let us get on with improving those areas over which we have direct control. I believe that the PCO has the willingness and the ability to meet the responsibilities described above. I cannot guarantee speed, because to regulate in a fair way and fashion policies that are workable, we must consult, and consultation takes time. I can promise that we will continue to make progress and to be responsive to industry needs.

In turn, I would ask that the industry accept that it has primary responsibility for proper preparation of documents, compliance with the legislation and for adopting a "can do" attitude which recognizes the PCO for what it is, not what it was.

The combination of these attitudes, and a genuine belief in the social and economic need for private pension plans in Canada, is necessary for creating an environment in which private pension plans are viable. Legislative changes alone will not salvage the situation. The mind set of the regulator and the industry is equally vital.

In the end, what future do I see for private pension plans in Canada? I am guardedly optimistic. Once all the finger pointing ends, I believe that our collective commitment to the private pension system will cause us to face our respective roles and responsibilities and to meet them. After all, as the saying goes "If you are not part of the solution, you are part of the problem."

Eileen E. Gillese is Chair, Pension Commission of Ontario and Professor, Faculty of Law, The University of Western Ontario.

Announcements

Status of Joint Annual Information Return (AIR) Project

In an effort to ease the administrative burden on administrators and reduce the cost of plan administration, Revenue Canada and the Pension Commission of Ontario have agreed to consolidate their respective annual filing requirements in a single document. The form, which incorporates the information requirements of both the PCO and Revenue Canada, has been under development for several months.

The joint AIR will be effective only when an amendment to Regulation 909 has been made and the PCO portion of the form is approved by the Minister of Finance. PCO staff are hopeful that those items will be accomplished in March, 1995.

The joint form will consist of four pages. Information required both by Revenue Canada and the Pension Commission of Ontario is requested on the first three pages. The fourth page is a schedule of information that is only required by Revenue Canada. Administrators should be aware that the information provided on this schedule is collected under the authority of the *Income Tax Act* (Canada) and is subject to the confidentiality provisions of that Act. This schedule will not be accessible to the PCO and it will not form part of PCO plan files.

Defined Benefit Plans Filing PBGF Assessments

In the past, administrators of defined benefit plans also received schedule B to the AIR for the PBGF assessment. In future, the PBGF assessment information will be on a separate form. This form will be mailed to administrators of defined benefit plans at the same time as the joint AIR.

Effective Date of the Joint AIR

The joint AIR is expected to apply to all pension plans with a fiscal year ending on or after March 31, 1995. Plans with a fiscal year ending before March 31, 1995 will receive the PCO's existing AIR (Form 2) and schedules in the usual manner. When applicable, the joint AIR will be distributed to individual plan administrators in the same manner as the current form.

Plans With Fiscal Years Ending on or After March 31, 1995

A plan that provides only defined contribution benefits with a fiscal year ending on or after March 31, 1995 will have 6 months following the date of the plan's year end to file the joint AIR. Any other plan with a fiscal year ending on and after March 31, 1995 will have 9 months following the date of the plan's year end to file the joint AIR.

The appropriate forms will be mailed to plan administrators along with an instruction package to help in their completion. Administrators can also refer to the next issue of the *PCO Bulletin* for details on filing the joint AIR. The spring issue will be published in early April, 1995.

Please refer to a Revenue Canada newsletter, *Pension Reform Update* for Revenue Canada's description of changes in the requirements for filing Revenue Canada Form T244, *Registered Pension Plan Annual Information Return*.

Joint AIR Project: Conversion to Single Registration Number Underway

In order to simplify plan administration further, Revenue Canada and the PCO have agreed to the use of a single registration number for all plans registered in Ontario. Separate Ontario pension plan registration numbers will be phased out and the current Revenue Canada seven digit number will be used for both federal and Ontario identification.

Administrators Asked to Report Mismatches in Registration Number

While every attempt has been made to match the Ontario registration number with the corresponding Revenue Canada number, to ensure accuracy, a letter will be sent to all pension plan administrators in February 1995 explaining the conversion to the single registration number. The letter will show the plan's Revenue Canada number that has been matched to the PCO registration number. Administrators will be asked to report any errors, omissions or mismatches to the Pension Commission of Ontario as quickly as possible.

Prescribed Forms 1.0 and 1.1 to be Revised

Two prescribed forms under the *Pensions Benefits Act* have been revised to assist in the efficient collection of information for the PCO and Statistics Canada. These forms are: an Application for Registration of a Pension Plan, and an Application for Registration of a Pension Plan Amendment. An amendment to the Regulation is required for these revised forms to become effective and PCO staff are hopeful that the amendment will be made in March, 1995. The effective dates will be announced later.

In the past, the PCO supplied Statistics Canada with information which PCO staff extracted from pension plan files. Statistics Canada then published data collected from all provincial pension regulators in *Pension Plans in Canada - Statistical Highlights and Key Tables*. This document is generally published every second year and is the principal source of data for policy development and related purposes. Therefore, it is desirable for the data to be accurate and provided on a timely basis.

Staff from the PCO and Statistics Canada have determined that the most efficient way to obtain accurate data is to take the information directly from the two forms mentioned above (Forms 1.0 and 1.1). These have been reworked to capture the required statistical information.

Office Consolidation of the PBA and Regulation 909 Underway

The office consolidation, which will include all amendments up to and including O. Reg. 665/94 (filed on October 28, 1994), is expected to be available for sale at Publications Ontario in March, 1995. Publications Ontario is at 50 Grosvenor Street, Toronto, Ontario. You may write to Publications Ontario at 880 Bay Street, 5th Floor, Toronto, ON M7A 1N8 or call 416-326-5300 or toll free in Ontario 1-800-668-9938.

PCO staff have prepared a table of contents to Regulation 909 for inclusion in the office consolidation. However, since the publication date of the office consolidation is uncertain, and as a convenience to pension practitioners, the table of contents to Regulation 909 is published in English and French on pages 25 and 26 of this issue.

Users of this table of contents should be aware that there are no section descriptors in Part II of Regulation 909. PCO staff composed descriptors as a convenience to readers only. Section 9 of the *Interpretation Act* states that marginal notes and headings are provided as a matter of convenience only. (Please refer to the introductory remarks to the Table of Contents on page 24.)

How to Obtain an Electronic Version of the Office Consolidation

The PCO continues to receive numerous requests from its stakeholders for an electronic version of the PBA and Regulation 909. We have advised Publications Ontario (distributor for the Queen's Printer) that there is significant demand for this service.

When the office consolidation is available, Publications Ontario will be able to provide the Act and Regulations on diskette. They will not be able to provide electronic versions of future amendments to the Regulation.

The Copyright Unit of Publications Ontario is responsible for reviewing requests for diskettes and will determine whether the single-user licence or multiple end-user licence applies (fees vary depending on the licence). Written requests should be directed to:

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Senior Copyright Analyst, Copyright Unit
Publications Ontario
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Your letter should:

- request permission for the appropriate licence and for a diskette version of the *Pension Benefits Act* and Regulation 909
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- state the total number of employees in the business and, the number of users
- indicate how the users access the information, for instance:

... "our research branch consists of nine people who are linked to one LAN.
These would be the only users of the electronic version of the legislation."

- confirm that, if the number of users changes in future, the organization or company is responsible for writing to confirm the change. This may result in a different licensing arrangement and fees.

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Error Noted in the PCO Annual Report

A typographic error was found in item V. *Statement of Pension Benefits Guarantee Fund for the Year Ended March 31, 1994*. Readers will note that the balance in the fund at the beginning of the year appears as \$23,257. The fund was in a deficit position at that time and the figure ought to have been placed in parenthesis. These figures are expressed in thousands. The PCO regrets this error.

AIR forms and schedules for pension plans with a fiscal year ending December 31, 1994 were mailed by the PCO in late December, 1994. Mailing addressees were based on the most recent information available in PCO records.

Administrators who have not received the AIR documents should contact their Pension Officer or Analyst at the PCO or, call George Ha, Manager, Revenue Collection & PBGF Administration at (416) 314-0676.

Please help us to maintain accurate records and advise the PCO of address changes as soon as possible. This will help to reduce the cost of pension regulation.

Life Income Fund Update

What is an Ontario Life Income Fund?

Ontario's Life Income Fund ("LIF") is a Registered Retirement Income Fund (a "RRIF" as defined in the *Income Tax Act* (Canada)) that has been modified to meet the requirements set out in Schedule 1 of Regulation 909 to the *Pension Benefits Act*.

Schedule 1 identifies the contractual requirements of an Ontario LIF. Schedule 1 was amended in 1994 and the updated version is reproduced at the end of this article for the convenience of readers.

1995 Maximum Withdrawal Table for an Ontario LIF

The annual amount which may be withdrawn from an Ontario LIF must be calculated at the beginning of each fiscal year of the LIF. (The fiscal year of a LIF must end on the 31st day of December and must not exceed twelve months.) No withdrawals from a LIF are permitted until the owner of the LIF has attained the age at which that individual would have been eligible to begin receiving retirement payments under the terms of the plan from which the locked-in money, now held in the LIF, was originally transferred. The date at which the owner would have been eligible to begin receiving retirement payments can be no later than 10 years before the normal retirement age identified in the applicable pension plan. For most individuals that would be no later than age 55.

The maximum withdrawal in a year is based on the number of years from January 1 of that year to December 31 of the year in which the individual turns age 90. If the CANSIM method which produces the greatest annual payout is used, the interest assumption used for the first 15 years cannot exceed the CANSIM Series B14013 interest rate for the preceding month of December. The interest assumption for the remaining years cannot exceed 6%. CANSIM Series rates are published by the Bank of Canada in the *Bank of Canada Review*. The Series B14013 interest rate for December, 1994 is 9.16%.

The following table, which identifies the maximum percentages of LIF balances which may be withdrawn in 1995, was prepared using the CANSIM method outlined above: 9.16% for the first fifteen years and 6% for the remaining years.

The applicable maximum withdrawal percentage in the table is applied to the balance of the LIF at the

beginning of 1995. The dollar figure produced by the calculation is the maximum amount which may be withdrawn from a LIF in 1995.

Life Income Fund - 1995 Withdrawals

Age at Start of Year	New Age During Year	Years to End of Year Plan Holder Turns 90	Maximum Withdrawal as a Percentage of the LIF Balance at the Start of Year
54	55	36	8.28808%
55	56	35	8.34601%
56	57	34	8.40830%
57	58	33	8.47535%
58	59	32	8.54760%
59	60	31	8.62555%
60	61	30	8.70973%
61	62	29	8.80079%
62	63	28	8.89940%
63	64	27	9.00638%
64	65	26	9.12262%
65	66	25	9.24915%
66	67	24	9.38717%
67	68	23	9.53804%
68	69	22	9.70334%
69	70	21	9.88494%
70	71	20	10.08500%
71	72	19	10.30610%
72	73	18	10.55131%
73	74	17	10.82430%
74	75	16	11.12952%
75	76	15	11.47243%
76	77	14	11.87171%
77	78	13	12.34055%
78	79	12	12.89651%
79	80	11	13.56354%

To illustrate, for an individual who turns age 60 during 1995 (attained age is 59) and whose LIF has a balance of \$100,000 at January 1, 1995, the maximum withdrawal permitted in 1995 would be:

$$\$100,000 \times .0862555 = \$8,625.55$$

If the owner of a LIF has not attained, before January 31, 1995, the age at which he or she would have been eligible to begin receiving retirement payments under the terms of the plan from which the locked-in money was originally transferred, the full annual withdrawal for 1995 is not applicable. The annual amount must be prorated to recognize only the months during 1995 that the owner is eligible to receive payments.

Transferring Locked-in Money to a LIF With the Consent of a Spouse

Administrators of pension plans shall not comply with an election to transfer locked-in money to an Ontario LIF unless and until three conditions are satisfied:

1. The spouse, if any, of the member or former member making the election provides written consent to the transfer.
2. The individual making the election is eligible to commence receiving pension payments in accordance with the terms of the pension plan.
3. The transferee has agreed to administer the amount transferred and all interest and/or investment gains as required by the *Pension Benefits Act* (the “Act”) and the Regulation under the Act.

The administrator of a Locked-in Retirement Account (a “LIRA” - commonly referred to as a locked-in RRSP) who receives a direction to transfer money to a LIF must also ensure that these conditions are satisfied.

The authority for an administrator to refuse to comply with a request to transfer money to a LIF unless the spouse has consented in writing is contained in paragraph 1, section 1 of Schedule 1 to the Regulation. Whether written consent is provided is solely at the option of the spouse. The consent condition is not a requirement for a spouse to provide consent to waive the spouse’s interest in the funds being transferred.

The Act provides spouses (married and common law) with an interest in assets held under a LIF contract. That interest takes the form of specific legislated survivor entitlements and a limited entitlement in the event of marriage breakdown.

Spouses who are not living separate and apart from the owner of the LIF at the owner’s date of death are automatically entitled to receive the balance of the LIF as an unlocked death benefit. A 60 per cent joint and survivor annuity must be purchased where a spouse is not living separate and apart from the owner of the LIF when the LIF assets are used to purchase an annuity.

A former or estranged spouse has an entitlement under the PBA to a limited amount of assets held in a LIF as a marriage breakdown settlement. However, that entitlement is effective only when a court order or domestic contract under the *Family Law Act* (Ontario) is provided to the administrator. Assets transferred on marriage breakdown must continue to be administered as locked-in assets.

When a former member of a pension plan wishes to begin receiving income from locked-in funds, that individual must transfer the funds to a LIF or to an insurance company to purchase an immediate life annuity. If a transfer to a LIF is made, annual payouts from the LIF and any investment losses may reduce the amount of any future survivor benefit or marriage breakdown settlement. A spouse may choose to withhold consent to a transfer for that reason.

When the former pension plan member chooses to purchase an annuity, the annual amount of the pension and any subsequent survivor pension are guaranteed. Investment losses, if any, are absorbed by the insurance company.

When the LIF option is chosen, it is possible that the annual payout from the LIF may exceed the annualized pension which would have been available from an annuity. Consequently, the balance of the LIF may not be sufficient to buy the same guaranteed amount of pension and survivor pension that would have been payable had the owner initially chosen the annuity option. Because the owner of the LIF retains control of the investments in a LIF, investment losses will also reduce the balance of the LIF.

In order to eliminate any misunderstanding of the consent condition, administrators may wish to use a prepared form. Use of a form similar to that suggested below will help the administrator provide a complete and consistent explanation of the consent condition every time a transfer to a LIF is requested.

Suggested Consent Form

Spousal Consent to a Transfer to a Life Income Fund (LIF)

I, _____ am the spouse, as defined in the *Pension Benefits Act*, of
_____ *name of spouse*

_____ who has requested a transfer of locked-in money from
_____ *name of pension plan member/former member*
or owner of a Locked-in Retirement Account (LIRA)

_____ *name of pension plan or financial institution administering LIRA*

I am aware that the administrator of a pension plan or of a LIRA may not comply with a request to transfer locked-in money to a LIF unless the written consent of the spouse is obtained.

I am aware that there is no requirement under the *Pension Benefits Act* and Regulation 909 for a spouse to provide such written consent. It is solely at the option of the spouse to provide written consent.

I understand that by providing written consent, I am not waiving my rights under the *Pension Benefits Act* and Regulation 909 to survivor benefits or benefits which may be available on marriage breakdown.

I understand that as a spouse who is not living separate and apart from the owner of the LIF at the owner's date of death, I will be entitled to receive a death benefit of either the balance of the LIF as an unlocked lump sum payment or as an immediate or deferred life annuity.

I understand that as a spouse who is not living separate and apart from the owner of the LIF when LIF assets are used to purchase a life annuity, the annuity must provide a survivor pension of at least 60 per cent of the pension received by my spouse.

I understand that, in the event of marriage breakdown prior to the date an annuity is purchased, no more than 50 per cent of the LIF assets may be transferred to my LIRA or LIF, or to purchase an immediate or deferred life annuity.

I understand, in the above situation, any interest I may have in the assets held in the LIF is effective only where a court order or domestic agreement under the *Family Law Act* is provided to the administrator.

Spouse's signature and address

Dated at _____ in the Province of _____
_____ *city/town* _____ *province*

this _____ day of _____ 199 _____.
_____ *date* _____ *month* _____ *year*

Witness' printed name, signature and address

Prior to completing this form, a spouse should consider obtaining independent legal advice concerning individual rights and the effect of consent.

Vendors of LIF and LIRA Contracts Approved by Other Jurisdictions May Not Meet Ontario's Requirements

Some of the provincial pension regulatory authorities in Canada require that specimen documents for Life Income Fund (LIFs) and Locked-in Retirement Accounts (LIRAs) be reviewed and approved by the respective regulatory authority. It should be noted that those lists of approved vendors or contracts maintained by other jurisdictions comply only with the pension legislation of that jurisdiction.

Ontario's approach to LIF and LIRA contracts differs from that of some provincial pension regulatory authorities. Ontario does not require that specimen documents for Ontario LIFs and LIRAs be submitted for approval. As a result, the PCO does not maintain a list of approved vendors or contracts for LIFs and LIRAs which comply with the *Pension Benefits Act*.

As a courtesy to pension regulators in other jurisdictions and the pension community, the PCO has agreed to include the lists of approved contracts on the PCO Conference #149 on the BBS (lists are indexed under ZCAPSA). Anyone using the lists of approved vendors or contracts provided by other jurisdictions should be aware that none of the contracts or institutions that appear on these lists have been approved by Ontario. Ontario LIFs or LIRAs must be administered in compliance with the *Pension Benefits Act* and Regulation 909.

Condition of Administration for LIF and LIRA Contracts by Financial Institutions

LIF or LIRA documents constitute a contract between a former pension plan member and a transferee institution. The transferee institution must ensure that money held under an approved contract is administered in accordance with the terms of the contract and in accordance with the Ontario legislation. This means that any person or institution responsible for transferring locked-in money* cannot assume that a contract approved by another jurisdiction also complies with Ontario's contractual requirements.

The Ontario LIF and LIRA are defined under section 1 of the Regulation. An Ontario LIF must comply with the contractual requirements of Schedule 1 to the Regulation and section 21 of the Regulation. **Locked-in money may not be transferred to any LIF or LIRA that does not satisfy the contractual requirements of an Ontario LIF or LIRA.**

Subsection 20(3) of the Regulation prohibits the administrator of a registered pension plan (the initial transferor) from making a transfer from a plan fund until specific conditions have been met by the transferee. The transferee must agree to administer the money as required by the Act and the Regulation. It is recommended that the plan administrator obtain the transferee's written agreement to evidence the transferee's obligation.

Any financial institution that has received locked-in money may not subsequently transfer moneys (now the transferor), including all accrued interest or investment gains, until the successor transferee has also agreed to the administrative condition. Again, it is recommended that the transferee's written agreement be obtained as evidence that the transferee undertakes to meet that obligation.

* The term "locked-in money" mentioned above refers only to pension money that is required to be administered according to the locking in provisions of Ontario's Act and Regulation.

Schedule 1 LIFE INCOME FUND REQUIREMENTS

Establishing the Fund

1. Only the following persons may purchase a life income fund with respect to their entitlement to a pension under a pension plan:

1. A member or former member of the pension plan who has obtained the written consent of his or her spouse, if any.
2. The spouse or former spouse of a member or former member if the spouse or former spouse is entitled to a pension benefit as a result of the death of the member or former member or as a result of marriage breakdown.

2.--(1) An arrangement establishing a life income fund must provide for the matters described in this section.

(2) It must indicate the name and address of the financial institution providing the fund.

(3) It must describe the purchaser's powers, if any, respecting investment of the assets in the fund.

(4) It must state that the purchaser agrees not to assign, charge, anticipate or give as security money payable under a life income fund except for a purpose described in subsection 65(3) of the Act.

(5) It must describe the method of determining the value of the fund. This valuation method must be the one that is to be used to establish its value upon the death of a person entitled to payment, upon the establishment of a life annuity or upon a transfer of assets from the fund.

3. The fiscal year of the fund must end on the 31st day of December and must not exceed twelve months.

Periodic Payments out of the Fund

4.--(1) Payments out of the life income fund must begin,

- (a) no earlier than the earlier of,
 - (i) the earliest date on which the former member is entitled to receive pension

benefits under the Act as a result of termination of employment or termination of membership in any pension plan from which money was transferred into the life income fund, or

- (ii) the earliest date on which the former member is entitled to receive pension benefits under any pension plan described in subclause (i) as a result of termination of employment or termination of membership in the plan; and

(b) no later than the end of the second fiscal year of the fund.

(2) The purchaser must decide the amount to be paid out of the fund each year. He or she must do so either at the beginning of the fiscal year of the fund or at another time agreed to by the financial institution. His or her decision expires at the end of the fiscal year to which it relates.

(3) If the purchaser does not decide the amount to be paid out of the fund for a year, the minimum amount determined under section 5 shall be deemed to be the amount to be paid.

(4) Payments out of a life income fund are subject to division in accordance with the terms of a domestic contract as defined in Part IV of the *Family Law Act* or the terms of an order made under Part I of that Act.

5.--(1) The amount of income paid out of the life income fund during a fiscal year must not exceed "maximum" in the following formula:

$$\text{maximum} = C/F$$

in which,

C = the balance in the fund at the beginning of the fiscal year, and

F = the value, at the beginning of the fiscal year, of a pension of which the annual payment is \$1 payable at the beginning of each fiscal year between that date and the 31st day of December of the year in which the purchaser reaches ninety years of age.

(2) The amount of income paid out of the life income fund during a fiscal year must not be less

than the minimum amount prescribed for registered retirement income funds under the *Income Tax Act* (Canada).

(3) The following apply with respect to the termination of the amount “F” in subsection (1):

1. The amount “F” must be established at the beginning of each fiscal year of the fund using an interest rate of not more than 6 per cent.
2. For the first fifteen years after the date of the valuation, the value of the pension may be determined by using a percentage that is,
 - i. greater than 6 per cent, and
 - ii. less than or equal to the percentage obtained on long-term bonds issued by the Government of Canada for the month preceding the date of the valuation, as compiled by Statistics Canada and published in the Bank of Canada Review under identification number B14013 in the CANSIM system.

(4) For the initial fiscal year of the fund, the “maximum” in subsection (1) shall be adjusted in proportion to the number of months in that fiscal year divided by 12, with any part of an incomplete month counting as one month:

(5) If a part of the fund purchased at the beginning of a fiscal year corresponds to sums transferred directly or indirectly during the same year from another life income fund of the purchaser, the “maximum” in subsection (1) shall be deemed to be zero.

Transferring Assets from the Fund

6.--(1) The purchaser of the life income fund may transfer any or all of the assets in it,

- (a) to another life income fund;
- (b) to purchase an immediate life annuity that meets the requirements of section 22 of the Regulation; or

Note: In the most recent office consolidation of this Regulation, the English version of clause 6(1)(b) of Schedule 1 referred to section 19. In the official volumes, the reference was to section 22. That error has been corrected.

(c) before December 31 in the year in which the purchaser reaches 71 years of age, to a locked-in retirement account.

(2) In the arrangement establishing the fund, the financial institution must agree to make such a transfer within thirty days after the purchaser requests it. This does not apply with respect to the transfer of assets held as securities whose term of investment extends beyond the thirty-day period.

(3) If the assets in the life income fund consist of identifiable and transferable securities, the financial institution may transfer the securities with the consent of the purchaser.

Payment of the Balance in the Fund

7.--(1) The purchaser of the fund shall use any assets remaining in the life income fund on the 31st day of December in the year in which he or she reaches eighty years of age to purchase an immediate life annuity that meets the requirements of section 22 of the Regulation.

Note: In the most recent office consolidation of this Regulation, the English version of subsection 7(1) of Schedule 1 referred to section 19. In the official volumes, the reference was to section 22. That error has been corrected.

(2) If the purchaser of the fund does not purchase the life annuity on or before the 31st day of March in the year after the year in which he or she reaches eighty years of age, the financial institution shall issue or arrange for the issuance of a life annuity contract.

(3) For the purposes of the life annuity, the spousal status of the purchaser of the fund is to be determined on the date the annuity is purchased.

(4) Payments under a life annuity are subject to division in accordance with the terms of a domestic contract as defined in Part IV of the *Family Law Act* or the terms of an order made under Part I of that Act.

Survivor's Benefits

8.--(1) If the purchaser of the life income fund is a member or former member of the pension plan and if he or she dies before the balance of the fund is used

to purchase the life annuity, the purchaser's spouse or, if there is none, his or her named beneficiary or, if there is none, his or her estate is entitled to receive a benefit equal to the balance in the fund.

(2) A spouse living separate and apart from the purchaser on the date of the purchaser's death is not entitled to receive the balance of the fund.

(3) For the purposes of subsection (1), a person's spousal status is determined on the date of death of the purchaser.

9.--(1) The spouse of the purchaser of the life income fund may waive survivor's benefits under the fund before the balance of the fund is used to purchase an immediate life annuity.

(2) A waiver of survivor's benefits may be revoked before the balance of the fund is used to purchase an immediate life annuity.

(3) The waiver or revocation is made by giving notice to the financial institution providing the life income fund.

Amending the Fund

10.--(1) In the arrangement establishing the life income fund, the financial institution providing the fund must agree not to amend the arrangement except as provided in this section.

(2) The financial institution must give the purchaser of the fund at least ninety days notice of a proposed amendment, other than an amendment described in subsection (3).

(3) The financial institution must not amend the arrangement if the amendment would result in a reduction in the purchaser's benefits under the arrangement unless,

(a) the financial institution is required by law to make the amendment; and

(b) the purchaser is entitled to transfer the balance in the life income fund under the terms of the arrangement that exist before the amendment is made.

(4) When making an amendment described in subsection (3), the financial institution must,

(a) notify the purchaser of the fund of the nature of the amendment; and

(b) allow the purchaser at least ninety days after the notice is given to transfer all or part of the balance in the fund.

(5) Notices under this section must be sent by registered mail to the purchaser's address as set out in the records of the financial institution.

Information to be Provided by the Financial Institution

11.--(1) In the arrangement establishing the life income fund, the financial institution must agree to provide the information described in this section to the person indicated.

(2) At the beginning of each fiscal year, the following information must be provided to the purchaser:

1. The sums deposited, the accumulated earnings, the payments made out of the fund and the fees charged against it during the previous fiscal year.

2. The balance in the fund.

3. The minimum amount that must be paid out of the fund to the purchaser during the current fiscal year and each subsequent one.

4. The maximum amount that may be paid out of the fund to the purchaser during the current fiscal year and each subsequent one.

(3) If the balance of the fund is transferred as described in subsection 6(1), the purchaser must be given the information described in subsection

(2) determined as of the date of the transfer.

(4) If the purchaser dies before the balance in the fund is used to purchase an immediate life annuity, the person entitled to receive the balance must be given the information described in subsection (2) determined as of the date of the purchaser's death. O. Reg. 564/92, s. 3; O. Reg. 409/94, s. 7; O. Reg. 558/94, s. 6.

Annexe 1

EXIGENCES RELATIVES AUX FONDS DE REVENU VIAGER

ÉTABLISSEMENT DU FONDS

1 Seules les personnes suivantes peuvent constituer un fonds de revenu viager relativement à leur droit à pension dans le cadre d'un régime:

1. Le participant ou l'ancien participant à un régime qui a obtenu le consentement écrit de son conjoint, le cas échéant.
2. Le conjoint ou l'ancien conjoint d'un participant ou d'un ancien participant s'il a droit à une prestation de retraite en raison du décès du participant ou de l'ancien participant ou en raison de l'échec du mariage.

2 (1) L'arrangement qui établit un fonds de revenu viager doit prévoir les questions visées au présent article.

(2) Il doit indiquer le nom et l'adresse de l'institution financière qui offre le fonds.

(3) Il doit préciser les pouvoirs du constituant, le cas échéant, concernant les placements de l'actif du fonds.

(4) Il doit déclarer que le constituant accepte de ne pas céder, grever, escompter ni donner en garantie une somme payable aux termes du fonds de revenu viager, sauf en vue d'une fin prévue au paragraphe 65(3) de la Loi.

(5) Il doit préciser la méthode utilisée pour déterminer la valeur du fonds. Cette méthode d'évaluation est celle qui doit être utilisée pour établir sa valeur au moment du décès d'une personne ayant droit à un paiement, de l'établissement d'une rente viagère ou du transfert d'éléments d'actif du fonds.

3 L'exercice du fonds doit se terminer le 31 décembre et ne pas compter plus de douze mois.

PAIEMENTS PÉRIODIQUES SUR LE FONDS

4 (1) Les paiements sur le fonds de revenu viager doivent commencer:

- a) au plus tôt à celle des dates suivantes qui survient en premier:
 - (i) la première date à laquelle l'ancien participant a le droit de recevoir des

prestations de retraite aux termes de la Loi par suite de la cessation de son emploi ou de celle de son affiliation à un régime duquel des sommes ont été transférées dans le fonds de revenu viager,

- (ii) la première date à laquelle l'ancien participant a le droit de recevoir des prestations de retraite aux termes d'un régime visé au sous-alinéa (i) par suite de la cessation de son emploi ou de celle de son affiliation au régime;

b) au plus tard à la fin du deuxième exercice du fonds.

(2) Le constituant doit décider du montant qui sera prélevé sur le fonds chaque année. Il prend la décision soit au début de l'exercice du fonds, soit à un autre moment convenu avec l'institution financière. Sa décision s'applique jusqu'à la fin de l'exercice auquel elle se rapporte.

(3) Si le constituant ne décide pas du montant à prélever sur le fonds pour une année, le montant minimal déterminé aux termes de l'article 5 est réputé le montant payable.

(4) Les paiements sur un fonds de revenu viager sont susceptibles d'être partagés conformément aux conditions d'un contrat familial, au sens de la partie IV de la *Loi sur le droit de la famille*, ou d'une ordonnance rendue en vertu de la partie I de cette loi.

5 (1) Le montant du revenu prélevé sur le fonds de revenu viager au cours d'un exercice ne doit pas dépasser le maximum calculé selon la formule suivante:

$$\text{maximum} = C/F$$

où:

C = le solde du fonds au début de l'exercice; et

F = la valeur, au début de l'exercice, d'une pension dont le versement annuel est de 1 \$ payable au début de chacun des exercices compris entre cette date et le 31 décembre de l'année au cours de laquelle le constituant atteindra l'âge de quatre-vingt-dix ans.

(2) Le montant du revenu prélevé sur le fonds de revenu viager au cours d'un exercice ne doit pas être inférieur au minimum prescrit aux termes de la *Loi de l'impôt sur le revenu* (Canada) pour les fonds enregistrés de revenu de retraite.

(3) Les dispositions suivantes s'appliquent à la détermination de la valeur «F» prévue au paragraphe (1):

1. La valeur «F» doit être établie au début de chaque exercice du fonds, en utilisant un taux d'intérêt maximal de 6 pour cent.

2. Pour les quinze premières années qui suivent la date d'évaluation, la valeur de la pension peut être déterminée en utilisant un pourcentage qui est:

- i. supérieur à 6 pour cent,
- ii. inférieur ou égal au pourcentage obtenu sur les obligations à long terme émises par le gouvernement du Canada pour le mois précédant la date d'évaluation, tel qu'il est compilé par Statistique Canada et publié dans la *Revue de la Banque du Canada* sous le numéro de référence B14013 du Système canadien d'information socio-économique.

(4) Pour l'exercice initial du fonds, le «maximum» prévu au paragraphe (1) est rajusté proportionnellement au nombre de mois compris dans cet exercice divisé par 12, toute partie d'un mois incomplet comptant pour un mois.

(5) Si une partie du fonds constitué au début de l'exercice correspond à des sommes transférées directement ou indirectement d'un autre fonds de revenu viager du constituant au cours du même exercice, le «maximum» prévu au paragraphe (1) est réputé égal à zéro.

TRANSFERT D'ÉLÉMENTS D'ACTIF DU FONDS

6 (1) Le constituant d'un fonds de revenu viager peut transférer en totalité ou en partie l'actif de celui-ci, selon le cas:

- (a) dans un autre fonds de revenu viager;
- (b) afin de constituer une rente viagère immédiate qui satisfait aux exigences de l'article 22 du Règlement;

Remarque: Dans la plus récente codification administrative du présent règlement, la version anglaise de l'alinéa 6(1)(b) de l'annexe 1 renvoie à l'article 19. Dans les volumes officiels, le renvoi se fait à l'article 22. L'erreur a été corrigée.

(c) avant le 31 décembre de l'année au cours de laquelle il atteint l'âge de 71 ans, dans un compte de retraite avec immobilisation des fonds.

(2) Dans l'arrangement qui établit le fonds, l'institution financière doit accepter de faire le transfert dans les trente jours qui suivent la demande du constituant. Cette obligation ne s'applique pas au transfert d'éléments d'actif détenus sous forme de placements dans des valeurs mobilières dont le terme dépasse le période de trente jours.

(3) Si l'actif du fonds de revenu viager est composé de valeurs mobilières identifiables et transférables, l'institution financière peut transférer ces valeurs mobilières avec le consentement du constituant.

PAIEMENT DU SOLDE DU FONDS

7 (1) Le constituant du fonds utilise l'actif restant dans le fonds de revenu viager le 31 décembre de l'année au cours de laquelle il atteint l'âge de quatre-vingts ans afin de constituer une rente viagère immédiate qui satisfait aux exigences de l'article 22 du présent règlement.

Remarque: Dans la plus récente codification administrative du présent règlement, la version anglaise du paragraphe 7(1) de l'annexe 1 renvoie à l'article 19. Dans les volumes officiels, le renvoi se fait à l'article 22. L'erreur a été corrigée.

(2) Si le constituant du fonds ne constitue pas la rente viagère au plus tard le 31 mars de l'année qui suit celle au cours de laquelle il atteint l'âge de quatre-vingts ans, l'institution financière accorde ou vielle à ce que soit accordé un contrat de rente viagère.

(3) Aux fins de la rente viagère, l'état conjugal du constituant du fonds est déterminé à la date de constitution de la rente.

(4) Les paiements effectués aux termes d'une rente viagère sont susceptibles d'être partagés conformément aux conditions d'un contrat familial, au sens de la partie IV de la *Loi sur le droit de la famille*, ou d'une ordonnance rendue en vertu de la partie I de cette loi.

PRESTATIONS DE SURVIVANT

8 (1) Si le constituant du fonds de revenu viager est un participant ou un ancien participant au régime et qu'il meurt avant que le solde du fonds ne soit utilisé pour constituer la rente viagère, son conjoint

ou, s'il n'en a pas, son bénéficiaire désigné ou, s'il n'en a pas désigné, sa succession a le droit de recevoir une prestation égale au solde du fonds.

(2) Le conjoint qui vit séparé de corps du constituant à la date du décès de celui-ci n'a pas droit au solde du fonds.

(3) Pour l'application du paragraphe (1), l'état conjugal d'une personne est déterminé à la date de décès du constituant.

9 (1) Le conjoint du constituant du fonds de revenu viager peut renoncer à la prestation de survivant prévue par le fonds avant que le solde du fonds ne soit utilisé pour constituer une rente viagère immédiate.

(2) La renonciation à une prestation de survivant peut être révoquée avant que le solde du fonds ne soit utilisé pour constituer une rente viagère immédiate.

(3) La renonciation ou la révocation est faite au moyen d'un avis donné à l'institution financière qui offre le fonds de revenu viager.

MODIFICATION DU FONDS

10 (1) Dans un arrangement qui établit un fonds de revenu viager, l'institution financière qui offre le fonds doit accepter de ne pas modifier l'arrangement si ce n'est conformément au présent article.

(2) L'institution financière doit donner au constituant du fonds un préavis d'au moins quatre-vingt-dix jours d'une modification projetée, à l'exception d'une modification visée au paragraphe (3).

(3) L'institution financière ne doit pas apporter de modification à l'arrangement qui entraînerait une réduction des prestations du constituant aux termes de l'arrangement, sauf si:

- a) d'une part, la loi exige que l'institution financière apporte la modification;
- b) d'autre part, le constituant a le droit de transférer le solde du fonds de revenu viager aux termes de l'arrangement tel qu'il existait avant la modification.

(4) Lorsqu'elle apporte une modification visée au paragraphe (3), l'institution financière doit:

- a) aviser le constituant du fonds de la nature de la modification;
- b) allouer au constituant un délai d'au moins quatre-vingt-dix jours après la remise de l'avis pour transférer en totalité ou en partie le solde du fonds.

(5) Les avis prévus au présent article doivent être envoyés par courrier recommandé à l'adresse du constituant qui figure dans les dossiers de l'institution financière.

RENSEIGNEMENTS À FOURNIR PAR L'INSTITUTION FINANCIÈRE

11 (1) Dans un arrangement qui établit un fonds de revenu viager, l'institution financière doit accepter de fournir les renseignements prévus au présent article à la personne indiquée.

(2) Au début de chaque exercice, les renseignements suivants doivent être fournis au constituant:

1. Les sommes déposées, les gains accumulés, les sommes prélevées sur le fonds et les frais débités au cours de l'exercice précédent.
2. Le solde du fonds.
3. Le montant minimal qui doit être payé au constituant sur le fonds au cours de l'exercice courant et de chaque exercice suivant.
4. Le montant maximal qui peut être payé au constituant sur le fonds au cours de l'exercice courant et de chaque exercice suivant.

(3) Si le solde du fonds est transféré de la façon prévue au paragraphe 6(1), le constituant doit recevoir les renseignements prévus au paragraphe (2) et déterminés à la date du transfert.

4) Si le constituant meurt avant que le solde du fonds ne soit utilisé pour constituer une rente viagère immédiate, la personne qui a droit au solde doit recevoir les renseignements prévus au paragraphe (2) et déterminés à la date de décès du constituant. Règl. de l'Ont. 142/94, art. 1, *en partie*; Règl. de l'Ont. 409/94, art. 7; Règl. de l'Ont. 558/94, art. 6. 2

PCO Targets Outstanding AIRs and PBGF Assessments

The PCO is aware that a number of AIRs have not been filed within the prescribed filing periods. Failure to file the AIR and PBGF assessments is a violation of the *Pension Benefits Act* and Regulation 909. PCO staff have responded by contacting the majority of administrators who have outstanding filings to request their immediate attention to the problem.

Administrators who are currently in default have an obligation to immediately make the outstanding filings and remit the required filing fees, together with interest.

Because of the importance of the AIR filings in respect of protecting members' benefits, the PCO will initiate more vigorous enforcement, including prosecution, against those who do not comply voluntarily with those requirements.

Calculation of Interest on Overdue Annual Filing Fee Payments

Section 20 of the Act and subsection 18(1) of the Regulations require the administrator of a pension plan to file an Annual Information Return (an "AIR"). An annual filing fee must be calculated and remitted as part of this filing requirement.

Prior to November, 1992, the deadline for filing the AIR and remitting filing fees for all plans had been no later than six months after the last day of each fiscal year of a pension plan. The six month deadline still applies to pension plans that provide only defined contribution benefits. In November, 1992, the filing deadline for all other types of pension plans was changed to nine months after the last day of each fiscal year-end of the plan.

The method of calculating the annual filing fee for plans filing an AIR with a fiscal year ending on or after December 31, 1992 is included in Schedule A to the AIR form. The fee schedule can also be found under subsections 18(2), (3) and (4) of Regulation 909. Where fees are outstanding with respect to a fiscal year ending prior to December 31, 1992, please refer to the predecessor versions of section 18 for the fee schedules which were in force on the applicable due dates.

The filing fee for an AIR filed after the due date is 120 per cent of the fee otherwise owing. A fixed rate of interest must be paid on an overdue annual filing fee from the day following the due date to the date payment is actually received. Interest is calculated on the amount payable on the due date.

The rates of interest which are applicable to overdue AIR filing fee payments over the period from April 1, 1988 to March 31, 1995 are reproduced in the following table. Rates were originally established on a semi-annual basis. Quarterly rates are applicable from April 1, 1993. An updated interest rate table will be published in every edition of the *PCO Bulletin*.

Example:

Assume that a filing fee payment for the fiscal year ending December 31, 1993 is overdue, and when received on February 4, 1995, payment does not include the increase and interest charges. The outstanding amount which must be remitted is calculated as follows.

Using the table below, the interest rate which was effective on October 1, 1994 is 8 per cent.

Filing fee at due date:	\$1,500.00
Due date:	September 30, 1994
Date payment is received:	February 4, 1995
Interest:	@ 8% from October 1, 1994 to February 4, 1995

Filing fee at February 4, 1995	\$1,800.00
Interest $\$1,500 \times 0.08 \times \frac{127}{365}$	<u>41.75</u>
Total payment due as at February 4, 1995	\$1,841.75
Less: Amount received on February 4, 1995	<u>1,500.00</u>
Payment outstanding as at February 4, 1995	<u>\$ 341.75</u>

Annual Rates of Interest Payable on Overdue Annual Filing Fee Payments

Apr. 1/88 - Sep. 30/88	10%
Oct. 1/88 - Mar. 30/89	11%
Apr. 1/89 - Sep. 30/89	12%
Oct. 1/89 - Mar. 31/90	14%
Apr. 1/90 - Sep. 30/90	14%
Oct. 1/90 - Mar. 31/91	15%
Apr. 1/91 - Sep. 30/91	13%
Oct. 1/91 - Mar. 31/92	10%
Apr. 1/92 - Sep. 30/92	8%
Oct. 1/92 - Mar. 31/93	7%
Apr. 1/93 - Jun. 30/9	7%
Jul. 1/93 - Sep. 30/93	6%
Oct. 1/93 - Dec. 31/93	6%
Jan. 1/94 - Mar. 31/94	6%
Apr. 1/94 - Jun. 30/94	6%
Jul. 1/94 - Sep. 30/94	7%
Oct. 1/94 - Dec. 31/94	8%
Jan. 1/95 - Mar. 31/95	7%

Cheques must be made payable to the Minister of Finance. The registration number of the pension plan should be noted on the cheque.

More information concerning required fees for the registration of a new pension plan and annual filing fees is available on the PCO Conference #149 on the Bulletin Board System (the "BBS") under Policy Index Series A500.

Calculation of Interest on Overdue Guarantee Fund Assessment Payments

Subject to specific exemptions, any employer who is required to make contributions to a pension plan that provides defined benefits must pay an annual assessment to the Pension Benefits Guarantee Fund (the "PBGF"). The method of calculating the amount of the annual Guarantee Fund Assessment is set out in subsections 37(4) to (6) of the Regulations. Detailed information about the calculation is also included in the *Instructions for Completing the Guarantee Fund Assessment Form*.

The *Instructions* are part of the Annual Information Return (AIR) mailing made by the PCO to administrators of pension plans that provide defined benefits. The form was developed by the PCO to assist administrators in complying with the requirements of subsection 18(6) of the Regulations.

Payment of an annual Guarantee Fund Assessment is due on the assessment date. The assessment date falls nine months after the last day of each fiscal year of a pension plan. Where payment is not received or post-marked on or before the assessment date, the amount payable after the assessment date is 120 per cent of the assessment otherwise owing.

A fixed rate of interest calculated on 120 per cent of an overdue Guarantee Fund Assessment is also payable from the day following the assessment date on which the payment is received. In accordance with subsection 37(14), interest must be calculated at a rate equal to the chartered banks' rate on prime business loans plus three per cent. For the purpose of that calculation, the chartered banks' rate on prime business loans is determined from the Canadian Socio-Economic Information Management (CANSIM) Series B14020 rates which are published in the *Bank of Canada Review*.

A table which shows the monthly rates of interest over the period from January 1, 1987 to December 31, 1994 is reproduced below. The rates shown reflect the respective monthly CANSIM Series B14020 nominal rates, **plus an additional three per cent.**

Example:

Assume that a Guarantee Fund Assessment payment is overdue for the fiscal year ending December 31,

**Rates of Interest Payable on
Overdue Guarantee Fund Assessment Payments**

Year	% Jan	% Feb	% Mar	% Apr	% May	% Jun	% Jul	% Aug	% Sep	% Oct	% Nov	% Dec
1987	12.25	12.25	11.75	12.25	12.50	12.50	12.50	13.00	13.00	12.75	12.75	12.75
1988	12.75	12.75	12.75	13.25	13.25	13.75	13.75	14.25	14.75	14.75	14.75	15.25
1989	15.25	15.75	16.50	16.50	16.50	16.50	16.50	16.50	16.50	16.50	16.50	16.50
1990	16.50	17.25	17.25	17.75	17.75	17.75	17.75	17.25	16.75	16.75	16.25	15.75
1991	15.25	14.25	14.25	13.75	12.75	12.75	12.75	12.75	12.50	11.75	11.50	11.00
1992	10.50	10.50	11.25	10.75	10.50	10.00	9.75	9.50	9.25	10.75	12.75	10.25
1993	9.75	9.50	9.00	9.00	9.00	9.00	8.75	8.75	8.75	8.75	8.50	8.50
1994	8.50	8.50	9.25	9.75	9.75	11.00	10.50	10.25	10.00	10.00	10.00	11.00

1993, and when payment is received on January 18, 1995, the increase and applicable interest charges are not included. The outstanding amount which must be remitted is calculated as follows. Note that payments to the Pension Benefits Guarantee Fund are subject to Retail Sales Tax ("RST"). Please refer to the BBS Policy Index Reference P200-150 for more information about the application of RST.

Cheques must be made payable to the Pension Benefits Guarantee Fund. The registration number of the pension plan should be noted on each cheque.

More information about annual Guarantee Fund Assessments is available on the BBS under Policy Index Series P200.

PBGF Assessment
at assessment date: \$3,000.00
Assessment date: September 30, 1994
Date payment received: January 18, 1995
Interest: @ 10% from October 1,
1994 to January 18, 1995
(CANSIM B14020 rate at
October 1, 1994 plus 3%)

Assessment at January 18, 1995	
\$3,000 @ 1.20	\$3,600.00
Plus interest: $\$3,600 @ 0.10 \times \frac{110}{365}$	108.49
Total Assessment at January 18, 1995	\$3,708.49
Plus RST: $\$3,708.49 @ 0.08$	296.68
Total payment due as at January 18, 1995	\$4,005.17
Less: Amount received on January 18, 1995	3,000.00
Payment outstanding as at January 18, 1995	\$1,005.17

PCO Advisory Committees Update

In the summer 1994 issue of the *PCO Bulletin*, we published an article on the important role played by advisory committees in reviewing and commenting on proposed policies and other initiatives proposed to be taken by the PCO.

In order to ensure broad representation on these committees, we invited those wishing to serve to advise the appropriate chairperson of their interest.

The new appointees' terms are for two years. The committees are now constituted as follows:

Actuarial Advisory Committee

<u>Name and Firm</u>	<u>Expiration of Term</u>
Marvin Ens, Chair William M. Mercer Limited	August 31, 1996
Kevin J. Aselstine, The Alexander Consulting Group Limited	August 31, 1995
Peter Beca, MLH+A inc.	August 31, 1996
Robert Camp, Sedgwick Consulting Group	August 31, 1996
Steven M. Lipkowski, The Mutual Life Assurance Company	August 31, 1996
Karen G. Long KPMG Actuarial, Benefits & Compensation Inc.	August 31, 1996
Peter A. Robinson, Martineau Provencher & Associates Ltd.	August 31, 1995
Alnasir H. Samji, Towers Perrin	August 31, 1996
Allan H. Shapira Hewitt Associates	August 31, 1996

Legal Advisory Committee

<u>Name and Firm</u>	<u>Expiration of Term</u>
David Vincent, Chair Fasken Campbell Godfrey	September 1, 1995
Sean Weir, Borden & Elliot	September 1, 1996
David Wentzell, McMillan Binch	September 1, 1996
John Solursh, Blake Cassels & Graydon	September 1, 1996
Lewis Gottheil, Counsel, CAW - Canada	September 1, 1996
Paul Baston, Fraser & Beatty	September 1, 1995

Dona Campbell, Sack Goldblatt Mitchell	September 1, 1995
Bonnie Flatt, William M. Mercer Limited	September 1, 1995
Mark Zigler, Koskie & Minsky	September 1, 1996
Sheryl Smolkin, The Wyatt Company	September 1, 1996
Ian McSweeney, Osler Hoskin and Harcourt	September 1, 1995
Martha Milczynski, Gowling, Strathy and Henderson	September 1, 1995
Mary Louise Dickson, Dickson, Sachs, Appell & Beaman	September 1, 1996

Investment Advisory Committee

<u>Name and Firm</u>	<u>Expiration of Term</u>
John H. Ilkiw, CFA, Chair Frank Russell Canada Limited	June 30, 1995
Michael J. Gallimore, CFA, Diversified Fund Management Inc.	June 30, 1996
Paul D. Matthews, Stelco Inc.	June 30, 1996
William A. McColl Hudson's Bay Company	June 30, 1996
Douglas P. Thomas	June 30, 1995
Gerry F. McDonald, Montreal Trust	June 30, 1996
David G. Patterson, Newcastle Capital Management Inc.	June 30, 1996
Marc L. Rouillard, CFA, SEI Financial Services Limited	June 30, 1996
Robert Tattersall, Howson Tattersall Investment Counsel Ltd.	June 30, 1996
Ms Barbara L. Taylor, CFA, HOOPP Investment Management Limited	June 30, 1996

Accounting and Auditing Committee

<u>Name and Firm</u>	<u>Expiration of Term</u>
Mr. Bruce Winter, Chair Price Waterhouse	March 1, 1996
Mr. Donald Cockburn Ernst & Young	March 1, 1996
Mr. Richard Farrar Doane Raymond	March 1, 1996

Mr. R. Wayne Gladstone OMERS	March 1, 1997
Ms. Marie Holland KPMG Peat Marwick Thorne	March 1, 1997
Mr. Douglas Isaac Coopers & Lybrand	March 1, 1996
Mr. Neil Jacoby Shell Canada Pension Fund Management Inc.	March 1, 1995
Mr. Bryan Kogut BDO Dunwoody Ward Mallette	March 1, 1997
Ms. Patti MacNicol The Institute of Chartered Accountants of Ontario	March 1, 1997
Mr. Greg P. Shields The Canadian Institute of Chartered Accountants	March 1, 1997
Mr. Kenneth J. Vallillee, FCA Arthur Andersen & Co.	March 1, 1996
Mr. Don Wilkinson Deloitte & Touche	March 1, 1996

Your Questions Answered

We are told by our readers that "Your Questions Answered" is one of the most popular sections of the PCO Bulletin. The section is based on enquiries from our readers and the facts that they provide to us. It must be remembered that, although you may believe you are in a situation similar to the one described in this section, the answer to any question is subject to the facts of each particular case and the applicable law. Accordingly, the answers to the questions in this section have no legal authority nor should be construed as legal, actuarial, accounting or other professional advice. You should obtain independent professional advice if you have a particular interest in any of the matters addressed in this section.

Q. As a member of a pension plan that is registered under the PBA, should I automatically receive an annual statement that provides information about my pension benefits or must I request a statement?

A. The administrator of a pension plan must provide each plan member with an annual written statement that contains specific information about the plan and the member's benefits under the plan. Members are not required to request an annual statement nor does the Act permit members to waive their entitlement to receive an annual statement.

The administrator must comply with section 27 of the PBA which provides that, "The administrator of a pension plan shall transmit annually to each member a written statement containing the prescribed information in respect of the pension plan, the member's pension benefits and any ancillary benefits." There are other sections of the PBA which also provide

for the provision of a written statement to members.

In addition, the administrator must also provide a written statement which contains specific information when a member terminates employment, retires or dies.

Please refer to the article published in the August 1993 issue of the *PCO Bulletin* entitled "Staying Informed: A Member's Right to Information". The Policy Index Reference is I150-800.

Q. Our Statement of Investment Policies and Goals stipulates that only bonds with a "single A" rating or better may be purchased for the pension fund. If a holding is subsequently downgraded to "BBB" or lower, must we promptly sell it?

A. If the Statement of Investment Policies and Goals (SIP&G) specifies what the minimum

credit rating should be “at the time the investment is made,” there is no obligation to sell a bond that is subsequently downgraded. If the SIP&G is silent about “the time the investment is made,” it is then a matter of judgment and prudence whether the bond should be sold. If the SIP&G explicitly states that no bond below a certain rating should ever be held, then there does not appear to be any alternative but to sell the bond. However, if in the opinion of the investment manager such action would be imprudent, the investment manager can recommend to the plan administrator that the SIP&G be amended accordingly. Amending a SIP&G in such a case requires filing the amendment within 90 days of its adoption as prescribed by subsection 68(2) of Regulation 909.

Q. Can an employer propose to wind up a pension plan under the *Pension Benefits Act* if the proposal is conditional on acceptance by the Commission of an application for payment of surplus to the employer?

A. Section 68 of the *Pension Benefits Act* allows an employer to wind up a pension plan in whole or in part, but does not provide for a conditional proposal to wind up a plan. Consequently, the Superintendent cannot accept such a wind up proposal or wind up report.

Further, subsection 79(3) prevents the Commission from considering a surplus withdrawal application that is made in conjunction with a conditional wind up proposal. Subsection 79(3) provides authority to the Commission to consider an application for payment of surplus to the employer only in respect of a plan that is being wound up. In a plan in which the employer has filed a conditional notice of wind up, the Commission cannot be certain whether or not the plan is actually being wound up. Consequently, the Commission has no authority to consider the application.

Q. If an employer that already has a pension plan for its employees establishes a new plan and ceases to make contributions to the original plan, can the employer wind up the original plan?

A. The Divisional Court ruled, in a decision released on March 18, 1992 respecting the Otis Elevator Company pension plan, that the establishment of a successor pension plan does not preclude the wind up of the original plan. However, subsection 81(1) creates a legal fiction that the original plan continues to exist, thus providing further protection to the members of the former plan. Even though wound up, it is for all purposes to be treated as a continuing plan. Consequently, affected members may be provided with their wind up benefits from the original plan, but should the employer seek a surplus refund from the original plan, the Commission will deal with the application as a surplus withdrawal from an ongoing plan.

The decision of the Divisional Court can be found as Appendix “D” in Commission Decision indexed as XDEC-26 and available on the BBS.

Q. Costs are incurred in preparing wind up and surplus applications. Does the PCO have a policy concerning what level of expenses is acceptable? If so, does the fund or the sponsor pay the expense?

A. In the case of a wind up, the payment of expenses is governed by the language of the plan text. In the case of a surplus application, since members must consent to the employer receiving any share of surplus, the PCO’s policy is to require full disclosure of all arrangements pertaining to the application for and distribution of surplus, in the surplus-sharing agreement.

Table of Contents to Regulation 909

The following table of contents was prepared by PCO staff to assist those working with the Regulation. Unlike Part I of the Regulation which includes numerous section descriptors, Part II did not include any descriptors. In an effort to be helpful, subheads have been composed for Part II.

Readers should note that, according to section 9 of the Interpretation Act, “marginal notes and headings in the body of an Act and references to former enactments form no part of the Act but shall be deemed to be inserted for convenience of reference only.”

Pension Benefits Act
Loi sur les régimes de retraite

REGULATION 909

*This table of contents forms no part of the official text of the Act and Regulation.
It has been prepared for convenience of reference only.*

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Loi sur les régimes de retraite

RÈGLEMENT 909

*Cette table des matières ne fait pas partie du texte officiel de la Loi et du Règlement.
Elle ne vise qu'à faciliter la consultation.*

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Update on the PCO's Conference #149 on the BBS

One year ago, the PCO relaunched its policies on conference #149 after making improvements to the formatting. This enabled anyone with an interest in pension regulation in Ontario to electronically access PCO policies and decisions of the Commission. Since the policies have been prepared in both WordPerfect 5.1 for DOS and ASCII versions, they are universally available, regardless of which type of computer hardware or software an individual or company uses.

The main advantage of the BBS as a means to disseminate information is that the entire database of PCO policies and decisions of the Commission may be integrated electronically into the user's system and organized in a manner that best suits the user. Storage of files is simplified and retrieval of policies and related material is more efficient through the use of key word searches and other computer features.

Furthermore, users will know that they have access to exactly the same body of information as the Commission, the Superintendent and PCO staff.

Another advantage is the timely release of information. The PCO uses the NEWS area of the conference #149 to make announcements of importance to the pension community such as announcements by the Minister of Finance. Our commitment to subscribers is to upload information to the PCO conference within 48 hours of its release.

How to Become a Subscriber

The PCO is only responsible for the content of the material on its conference. The BBS is operated by CRS Online who is wholly responsible for the operation of the system and for providing technical assistance to subscribers. CRS Online also sets the subscription fees.

To subscribe:

Contact David Chaloner, General Manager,
CRS Online at 416-213-6000 or 416-213-6044
or fax 416-213-6038.

Prospective subscribers should indicate their interest in **PCO conference #149** specifically. CRS Online will send an information package on the BBS and PCO conference #149.

Information Available on the Conference and How to Access It

During 1994 we uploaded a total of 290 files to the file area of the conference including 264 policies, amendments to the Regulation and CAPSA-related information in WordPerfect 5.1 for DOS. (The number of ASCII files are slightly fewer because of formatting limitations in that version, for instance, detailed tables which cannot be prepared in ASCII. Where policies are available only in WP they are noted as such.)

In the summer and fall, 1994 we added 26 decisions of the Commission to the conference including several that had not been published before (these decisions are available in this issue of the *PCO Bulletin*).

NEWS Area of the Conference

When a subscriber logs onto the BBS, typically the subscriber would go to the NEWS area of the conference first to determine whether any files had been uploaded to the conference. An announcement will always appear whenever files are upload. Among other things, the announcement will include a listing of the uploaded files with the index reference.

The File Area of the Conference

The file area is sorted in alpha-numeric order. When a subscriber enters the file area after an upload, the subscriber will notice that the index references and descriptors for new files are asterisked, in bold face and flashing. There are several other ways to quickly identify new files:

- reference the list provided in the upload announcement to view or download individual files;
- use the command to view files uploaded since the last date the conference was used; or
- download the appropriate batch(es) of the new files.

Information on the Conference: Batches

Whenever the PCO uploads new files, a batch (in two versions) containing the individual files in compressed form has also been uploaded. This gives subscribers an option between individual files or batches. The benefit of batches is that they speed up transmission to the subscriber.

Batches appear at the top of the file area, in front of the individual files, and can be quickly identified by the exclamation point (!) in the index reference. If a new subscriber went on-line in mid January, 1995 to obtain the the entire PCO database, the subscriber would download approximately nine batches of files, depending on the version, of varying sizes.

Batches - 1994 Consolidation

These batches of varying sizes reflect the upload activity over the past year. In order to reduce the overall number of batches and to clearly distinguish the 1994 files from future ones, we propose to consolidate the 1994 batches by the end of March 1995.

We plan to rename the batches of files (including policies, amendments to the Regulation, regs and information provided by certain CAPSA members) as follows: !PO94W01., !PO94W02. and so forth. The descriptors which correspond to the index number will describe the batch further.

Similarly, batches of Commission decisions in ASCII version would appear as: !DE94A01., !DE94A02. and so forth.

Revisions to Files v. Updated Policies

When a non-substantive change occurs, for instance, typographic errors, the file will be deleted and replaced with a corrected file of the same name. To denote a change, the revised date will appear in the header section of the policy.

When a substantive change occurs, for instance, a policy is changed by the Commission, the original policy remains in the file for the historic record. The updated policy is catalogued in sequence and generally will reside beside the original policy it updates.

Sometimes PCO policies change as a result of an amendment to the Regulation (referenced on the BBS as YREG). Subscribers should note that there are no cross-references between YREGs and policy subjects.

Files Containing Forms

Forms prepared by the PCO for upload to its conference can be downloaded and integrated into the user's system and printed as required. Because of differences that exist within software packages and printers, forms may require some reformatting once saved in the user's system.

We have prepared the forms in WordPerfect 5.1 for DOS using Times Roman (AD) font in either 8 pt. 10 pt. or 12 pt. font sizes. Our best results were obtained on the HP Laserjet IIID printer or equivalent.

PCO Bulletin: Index of Published Information

In each issue of the *PCO Bulletin*, we publish a list of all files uploaded to the BBS since the last issue of the *PCO Bulletin*. Taken together, these comprise the full index of PCO published policies and material. Subscribers can find this information on-line in the batch called !INDEX.

As a convenience to stakeholders, we have published an index of all published PCO information which is organized by subject. (This replaces the cumulative index formerly published in the *PCO Bulletin* at this time of year.) Subscribers may find the format of this index (which follows this article) easier to use for reference purposes than the on-line version.

PCO Contact for Information on the PCO Conference

Subscribers with questions or concerns relating to the content of the information on the PCO Conference can contact Judith Chalmers at 416-314-0699 or fax 416-314-0650.

Questions of a technical nature relating to the operation of the BBS generally or the PCO conference specifically should be directed to CRS Online, Technical Support at 416-213-6001.

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ZCAPSA-04	Approved Vendors of LIFs, LIRAs, Jul 1994, Québec (Revised Jan 1995)	Uploaded to BBS
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Superintendent of Pensions Notices/Orders

Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, R.S.O. 1990, c. P.8 [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) The Pension Plan for Kimball Aim Systems Corp. (C-103910), December 6, 1994.
- 2) The Retirement Plan for the Employees of Lakewood Graphics Limited (C-100373), December 6, 1994.
- 3) Pension Plan of Corewall Inc. for W. Don Paton (C-103167), December 8, 1994.

Orders

The Superintendent issued Orders, pursuant to section 69 of the PBA [Wind-up Orders], as follows (effective date of wind up and date of order indicated, respectively):

- 1) Pension Plan for the Salaried Employees of Newman Steel Ltd. and its Associated Companies (C-7528), (partially wound up effective November 4, 1991), October 11, 1994
- 2) Pension Plan for the Salaried Employees of Newman Steel Ltd. and its Associated Companies (C-7528), (effective November 15, 1991), October 11, 1994
- 3) Newman Steel Hourly Plan (C-16175), (effective November 4, 1991), October 11, 1994
- 4) Revised Employees' Pension Plan for Employees of Oshawa Wood Products, Limited (C-5071), (effective November 12, 1992), December 1, 1994.

Tribunal Activities

This section summarizes matters related to the Pension Commission of Ontario.

1995 Dates for Commission Meetings

The Pension Commission will convene on the following Thursdays in 1995:

February 23, March 30, April 27, May 25, June 29, July 27, September 28, October 26, November 23, and December 14. There will not be a Commission meeting in August 1995.

PCO Board Members

The following members comprise the Commission:

Eileen E. Gillese, Chair
Monica J. Townson, Vice Chair
Darcie L. Beggs
Shiraz Y.M. Bharmal
Kathryn M. Bush
Donald G. Collins
C. S. (Kit) Moore
Joyce A. Stephenson

Hearings Before the Commission

Imperial Oil Limited Retirement Plan (C-8884) and Pension Plan for Employees of McColl-Frontenac Inc. (C-4280) (the "Plans")

Counsel for a group of former employees is appealing, under section 89 of the PBA, the decisions of the Superintendent of Pensions dated May 7 and 18, 1993 to register an amendment of August 1991 to section 4.3 of the Plans. A pre-hearing conference was held October 28, 1993 and adjourned sine die. The pre-hearing conference was reconvened November 18, 1994. Hearing dates have been set for March 2, May 23 and 24, 1995.

Sheet Metal Workers' Local Unions and Councils Pension Plan (C-15249)

Request for hearing with respect to a decision of the Superintendent of Pension dated May 25, 1994 refusing to issue an order that the plan be administered in accordance with clause 8(1)(e) and refusing to reject a plan amendment. Pre-hearing conference held September 8, 1994. Prof. Gillese presiding. Hearing date set but adjourned sine die on consent.

Westinghouse Canada Inc. Consolidated Pension Plan (C-9356)

A request for hearing pursuant to a Notice of Proposal to Make an Order requiring the plan be wound up in part effective October 1, 1992, dated August 23, 1993. Pre-hearing conference held July 14, 1994 by Prof. Gillese. Hearing was held November 10, 1994 and adjourned sine die.

Exide Canada Corporation Retirement Plan No. 1 for Employees, C-18558

Request for hearing with respect to a complaint by Msrs. Gladish and Rosen relating to the approval by the Superintendent of Pensions of a wind-up report in respect of the Exide Canada Corporation Retirement Plan No. 1 for Employees. Pre-hearing conference set for January 30, 1995, Ms. K. Bush presiding.

Otis Canada, Inc. Pension Plan for Draftsmen Local 164, (C-17647)

Application for Commission consent to the payment of surplus to Otis Canada Inc. Pre-hearing conference held August 11, 1994 by Prof. Gillese. The hearing was held October 6 and 7, 1994. The decision is published in this issue of the *PCO Bulletin* at page 60.

Commission Decisions - Applications Approved Since September, 1994

Applications Approved under s. 8 of Reg. 909, R.R.O. 1990, as amended, and ss. 78(1) of the PBA - Request for Consent of the Commission to Surplus Withdrawal on Plan Wind Up to be filed in Court

At the Commission meeting held November 17, 1994, the Commission consented pursuant to subsection 78(1) of the PBA and subsection 8(2) of Reg. 909, as amended, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) Retirement Plan for Salaried Employees of Amerace Ltd., (C-792)

Payment of surplus to Amerace Ltd. out of the Retirement Plan for Salaried Employees of Amerace Ltd., Registration No. C-792, in the amount of \$178,560 as at December 31, 1988 plus investment earnings thereon to the date of payment.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulation once the consent is effective.

(b) Ivaco Inc. Pension Plan for Hourly Union Employees at the Federal Bolt & Nut Division, (C-12003)

Payment of surplus to Ivaco Inc. out of the Ivaco Inc. Pension Plan for Hourly Union Employees at the Federal Bolt & Nut Division, Registration No. C-12003, in the amount of \$141,230 as at September 18, 1987 plus investment earnings thereon to the date of payment, less a proportionate share (60%) of the expenses authorised by the Order of the Honourable Mr. Justice O'Driscoll dated October 2, 1991.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulation once the consent is effective.

(c) Non-Contributory Pension Plan for Salaried Employees of Ivaco Inc. and its Participating Subsidiary Companies and Divisions, (C-12756)

Payment of surplus to Ivaco Inc. out of the Non-Contributory Pension Plan for Salaried Employees of Ivaco Inc. and its Participating Subsidiary Companies and Divisions, Registration No. C-12756, in the amount of \$31,324 as at September 18, 1987 plus investment earnings thereon to the date of payment, less a proportionate share (60%) of the expenses authorised by the Order of the Honourable Mr. Justice O'Driscoll dated October 2, 1991.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulation once the consent is effective.

Applications Approved under clause 8(1)(b) of Reg. 909, R.R.O. 1990 (as amended by O.R. 743/91) and ss. 78(1) of the PBA - Surplus Withdrawal on Plan Wind Up

At the Commission meeting held November 17, 1994, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of Reg. 909, R.R.O. 1990, as amended, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) Pension Plan for Salaried Employees of Engelhard Canada Limited, (C-9048)

Payment of surplus to Engelhard Canada Limited, from the Pension Plan for Salaried Employees of Engelhard Canada Limited, Registration Number C-9048, in the amount of \$2,265,004 as at April 26, 1991, plus investment earnings thereon to the date of payment.

This decision is rendered in light of the fact that (i) the current plan provisions allow for reversion of surplus to the employer on plan wind up, (ii) the employer has the consent of 100% of the members and former members entitled to benefits who the applicant has been able to contact, (iii) the applicant has satisfied the Commission that diligent efforts have been made to locate the other two members whose consents have not been provided, and (iv) there has been no opposition to this application from anyone who was entitled to the payment of benefits from the plan at the date of wind up.

(b) Pension Plan for Hourly-Rated Employees of Engelhard Canada Limited, (C-18035)

Payment of surplus to Engelhard Canada Limited, from the Pension Plan for Hourly-Rated Employees of Engelhard Canada Limited, Registration Number C-18035, in the amount of \$265,162 as at April 26, 1991, plus investment earnings thereon to the date of payment.

This decision is rendered in light of the fact that (i) the current plan provisions allow for reversion of surplus to the employer on plan wind up, (ii) the employer has the consent of 100% of the members and former members entitled to benefits who the applicant has been able to contact, (iii) the applicant has satisfied the Commission that diligent efforts have been made to locate the other member whose consent has not been provided, and (iv) there has been no opposition to this application from anyone who may have a potential claim on the surplus. The only objection to this application is made by a retired member who was entitled to the payment of benefits from the plan at the date of wind up.

(c) The Pension Plan for Salaried Employees of Cooper Canada Limited and Subsidiary and Affiliated Companies (C-6150)

Payment of surplus to Charan Sports Limited from The Pension Plan for Salaried Employees of Cooper Canada Limited and Subsidiary and Affiliated Companies, Registration Number C-6150, in the amount of \$191,424 as at December 31, 1989, plus investment earnings thereon to the date of payment less a proportionate share of the legal, actuarial and administrative expenses relating to the wind up and the surplus application.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased, or otherwise provided for to the satisfaction of the Commission.

This decision is rendered in light of the fact that the plan provisions allowed for payment of surplus to the employer on wind up of the plan; any subsequent documents such as board resolutions were invalidly created or were validly rescinded; the applicant has obtained a high level of consents from members and former members; and, Mr. Cooper, who had made representations objecting, advised the Pension Commission at the meeting that he no longer had any objection.

Application Approved under ss. 78(1), PBA & s.10 of Reg. 909, R.R.O. 1990, as amended, Request for Consent to Surplus Withdrawal - Continuing Pension Plan

At the Commission meeting held October 20, 1994, the Commission consented pursuant to subsection 78(1) of the PBA and section 10 of the Reg., to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) Norman Stein Holdings Ltd. Employees' Pension Plan, (C-19039)

Payment of surplus to Norman Stein Holdings Ltd. out of the continuing Norman Stein Holdings Ltd. Employees' Pension Plan, Registration Number C-19039, in the amount of \$242,500.

This consent shall not be effective until:

- a) the administrator issues a new notice to the members and former members to bring to their attention subsection 2.3 of the original plan text and 12.04 of the restated text;
- b) the administrator obtains from all the members and former members new consents to the company's application; and
- c) the administrator files a copy of the notice and consents with the Commission.

A draft of the proposed new notice must be sent to the Chair for comment prior to the transmittal to the members and former members.

Application Approved under ss. 63(7) & (8) of the PBA - Return of Member Contributions

At the Commission meeting held October 20, 1994, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

(a) Lumbermens Canadian Employees' Retirement Plan, (C-1898)

Refund of member required contributions from the Lumbermens Canadian Employees' Retirement Plan, Registration Number C-1898, in the aggregate amount of \$132,058 as at January 1, 1993 plus credited interest to the date of payment.

Pension Benefits Guarantee Fund ("PBGF")

On November 17, 1994, the Commission, pursuant to subsection 90(1) of the PBA, issued a declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

1) Pension Plan for Salaried Employees of Provincial Crane Inc., (C-102257)



INDEX NO.: XDEC-02

PLAN: Otis Canada Inc. Pension Plan for United Steel Workers of America,
Local 7062, C-004669

DATE OF DECISION: June 13, 1989

PUBLISHED: Bulletin 5/4 (Winter 1995)
Previously distributed to interested parties by mail.

IN THE MATTER OF the Pension Benefits Act, 1987;

AND IN THE MATTER OF an application for surplus withdrawal of Otis Canada Inc. in respect of the pension plan for Steel Workers Local 7062, pursuant to subsection 7a(2)(c) of the Ontario Regulation 708/87 as amended, requesting the Commission to file with the Court under subsection 79(1) of the Act, a consent in respect of the Otis Canada Incorporated's proposed application to the Supreme Court of Ontario to authorize distribution of \$6,700,000 to the Company.

Before: Mr. J. Kruger, Chairman
Ms. L. Gordon, Vice-Chairman
Mr. D. Collins, Member
Prof. E. Gillese, Member
Mr. J. St. Georges, Member

Appearances:

Mr. J. Hayes, Board Counsel
Ms. V. Robeson, Registrar
Ms. S. Rowland, Counsel for the Superintendent
Mr. P. Dempsey, Student-at-Law

Mr. J. Campion, Counsel for Otis Canada Incorporated
Mr. D. Vincent

Mr. B. Shell, Counsel for USWA Local 7062

Mr. R. Boulakia, Employees/retirees of Otis of Canada Inc.
Mr. H. Mackenzie
Mr. L. Simonffy

Mr. J. Dykes, Representatives of the ad hoc committee
Mr. M. Hyrciuk
Mr. M. Moran

Date Heard: March 16, 1989

Judgment Rendered: June 13, 1989

Facts

Otis Canada Incorporated (“Otis”) sought an appearance before the Pension Commission of Ontario (the “Commission”) pursuant to subsections 79(1) and 80(4) of the Pension Benefits Act, S.O. 1987, c. 35 (the “Act”) and subsection 7a(2)(c) of Ontario Regulation 708/87 (the “Regulation”). Otis requested the appearance because it needed Commission consent to withdraw \$6.7 million from the Otis pension plan for United Steel Workers of America, Local 7062 (“Otis Steel Workers Plan”), wound up effective October 2, 1987, which amount was allegedly the excess of assets over liabilities. Prior to the matter coming before the Commission, the Superintendent of Pensions (the “Superintendent”) approved the wind up report submitted by Otis on the termination of the steelworkers’ pension plan and so advised Otis in a letter dated November 8, 1988. A Staff Report was prepared as well in which it was recommended that the surplus be returned to Otis. The Superintendent’s approval and the Staff Report were based on documentation filed with the Commission staff by Otis.

During the opening days of the appearance, it became apparent that the Superintendent intended to take the role of a party to the appearance. Otis then sought and obtained the Commission’s leave to argue, as a preliminary matter, what status the Superintendent had in the appearance.

Issue

The issue before the Commission at this time is what role, if any, the Superintendent is entitled to take in an appearance before the Commission on a matter relating to surplus distribution.

Determination of the Issue

Before dealing with specific arguments that have been raised, it may be prudent to set out those considerations that are paramount in the minds of the members of the Commission in these proceedings. Those considerations form the context within which the Commission operates. They are admirably stated in Re Collins et al. and the Pension Commission of Ontario et al.; Re Bachelor et al. and the Pension Commission of Ontario et al., 56 O.R. (2d) 274 at pages 285 to 287.

...it appears that the Commission was established to ensure that certain interests were protected. While there is no doubt that those interests included the employer’s, there appears to be equally no doubt that the Commission was established to safeguard the plan members interests as well.... While the Commission may not, strictly speaking, be a trustee for the members, because it holds no money belonging to the plan, it would be artificial to conclude that the Commission’s obligation to members is lower than the high standard of fiduciary obligation imposed on trustees....

My conclusion is that the duty owed by the Commission, to both plan employees and Dominion as beneficiaries of the trust, was equivalent to that of a trustee. I have no hesitation in calling it a fiduciary duty; the law knows none higher.

In short, the Commission must guard zealously the interests of both plan members and the employer. This context becomes particularly important when dealing with the submissions of Otis in respect of natural justice but it informs and influences all aspects of our decision.

Otis maintains that participation by the Superintendent is improper for a number of reasons. First, it is argued that the Commission’s role under sections 79 and 80 of the Act is that of a review of, or an appeal from, a recommendation and decision of the Superintendent. In order for the Superintendent to be a party to the appearance, so the argument runs, the Act must expressly so stipulate.

The Commission cannot accept this interpretation of the legislation. In its view, the role created by the legislation for the Superintendent in respect of surplus is very different from that created for the Commission. Subsection 71(2) of the Act provides:

No payment shall be made out of the pension fund in respect of which notice of proposal to wind-up has been given until the Superintendent has approved the wind up report.

In other words, until the Superintendent approves a wind-up report, a pension plan administrator may not make a payment out of the pension plan except as provided for by subsection 71(3) of the Act.

In fact, the Superintendent's role goes further as under his supervision, the staff prepares a Staff Report in which it makes a recommendation as to whether surplus should be allowed to be removed. It is the practice of the Commission to receive the Staff Report as one of the reports provided with the application. All parties receive a copy of such Report. It receives the Staff Report as an aid to discharging its obligations under subsection 80(4) of the Act, set out below.

In contrast to the role of the Superintendent, the role that the Commission plays is set out in sections 79 and 80 of the Act and subsection 7a.(2) of the Regulations. Subsection 79(1) states:

No money may be paid out of a pension fund to the employer without the prior consent of the Commission.

Subsection 80(4) provides that:

The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless:

- (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
- (b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan;
- (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of termination of the pension plan; and
- (d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus moneys out of a pension fund.

And, finally, subsection 7a.(2) of the Regulations sets out that:

Payments may be made from surplus out of a pension plan that is being wound up in whole or in part, ...

- (c) if the Commission files with the court a consent under subsection 79(1) of the Act, where a court order authorizes the distribution of funds from surplus.

In effect, the Superintendent's approval of a wind-up report is a precondition to the matter coming before the Commission; the Superintendent must be satisfied that the wind up report is appropriate and must give his approval before the matter comes on for consideration before the Commission. The Staff Report is but a recommendation received by the Commission as advice and information. On this view of the legislation, the Superintendent makes no decision in relation to surplus distribution; that decision rests with the Commission, to be decided *de novo*. Thus, the Superintendent is not precluded from taking a role in that decision making process.

Alternatively, the relationship between the Superintendent's actions and the Commission's decision can be likened to a two-step process such as that in **The Law Society of Upper Canada v. French**, [1975] 2 S.C.R. 767. The first step is the Superintendent's approval of a wind up report and preparation of Staff Report; the second is the Commission's decision as to whether surplus funds may be paid out. As in the **French** case, in such a two-step process, the Superintendent is not precluded from participation at the second stage.

The second and third arguments raised by Otis have caused the Commission more concern. The second argument is based on the maxim of statutory interpretation *expresso unius est exclusio alterius*. Where there is an appeal from a decision of the Superintendent made under subsections 90(1), (2), (3), (4) and (5) of the Act, the party affected may require a hearing before the Commission. Under the hearing process before the Commission, subsection 90(11) of the Act expressly makes the Superintendent a party to the proceeding. Applying the maxim, Otis argues that as sections 79 and 80 of the Act are silent on the role of the Superintendent, it is to be implied that the legislature intended to deny him the right to appear as a party.

Although the Superintendent's role in an appearance is not specifically set out, silence in the legislation does not lead automatically to the conclusion that he is excluded. The maxim is a guide to interpretation but, as has been said, "it does not pre-ordain the conclusions". (**Jones v. A.G. of New Brunswick**, [1975] 2 S.C.R. 182 per Laskin C.J.C. at 195-196). The Commission is of the view that by implication, the legislature intended the Superintendent to take a role in this type of appearance. It must surely have been the legislature's intent that the Superintendent would be in a role to advise the Commission of the basis upon which he approved the wind up report under subsection 71(2). This view of the legislation is buttressed by reference to subsection 71(5) under which the Superintendent is entitled to refuse to approve a wind up report that does not protect the interests of members and former members of the pension plan. Surely the Commission is entitled to assure itself that the Superintendent has determined that the wind up report protects those interests by hearing from him. And, if different documentation comes to light during an appearance than that provided to the Superintendent, the Commission needs to know that in order to discharge its obligations under subsection 80(4).

Paragraph 25 of the written submissions of the Superintendent have made this concern more than academic. It reads as follows:

It is submitted that in view of certain documentation introduced on the first or second day of appearance, the Superintendent now has serious doubts as to whether or not the plan provides a reversionary interest of the surplus to the applicant. Since the original approval by the Superintendent of the wind-up report was based on the veracity of recitals in the plan documents, the Superintendent now wishes to make submissions and lead evidence, if necessary on this matter.

We are fortified in our interpretation of the legislation by the fact that, subject to a duty to be fair and statutory limitations, the Commission has the power to control its own procedures and there is nothing in the Act that prohibits the Superintendent from participating in an appearance.

The third argument raised by Otis is that the Superintendent's participation would create an apprehension of bias. The Commission, like any other statutory authority clothed with the power to make decisions affecting a person's rights and privileges, is bound by a duty of fairness. The duty to be fair encompasses a wide number of procedural safeguards including a prohibition against an apprehension of bias on the part of the decision maker - the Commission in this case. If the Superintendent's participation in the appearance would create a reasonable apprehension of bias, then he must be excluded unless that participation is authorized, expressly or by implication, by the Act. Because of the close working relationship between the Superintendent and the Commission, we are persuaded that the Superintendent's participation might create a reasonable apprehension of bias. In coming to this conclusion we note that the Superintendent is hired by the Commission (subsection 95(2)), there is day-to-day contact between the members of the staff of the Commission and the Commission itself and the Superintendent has given his approval and made a recommendation about some of the matters that the Commission must weigh in making its decision.

The same response must be made to this argument as to the preceding one: that the legislation created institutional bias where by implication, it authorized the Superintendent to take part in the proceedings. Section 80(4) of the Act precludes the Commission from consenting to an application in respect of a pension plan that is being wound up in whole or in part unless, “the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus.” It is mandatory that the Commission satisfy itself that the pension plan has a surplus. In order to fulfil that obligation, the Commission needs to understand the basis upon which the Superintendent approved the wind up report. The Superintendent, having approved the calculation of the amount of surplus in the plan, must be in a position to challenge those calculations if any evidence provided causes him to question them.

The Commission’s obligations as recognized by the Divisional court in Collins (supra) demands the presence of the Superintendent. Our obligation is to satisfy ourselves that the action contemplated is in the best interests of all the beneficiaries of the plan. The Superintendent’s participation assists us in discharging that obligation by providing us with the assurance that he was aware of all the facts before granting his approval of the wind up report and preparation of the staff recommendation. A refusal to permit the Superintendent to take part in the appearance may create the situation where the Commission is more likely to operate without full knowledge and therefore to risk breaching its responsibilities.

Conclusion

What role then is the Superintendent to take in these proceedings? We find it unnecessary to decide for all purposes whether the Superintendent has full status or limited intervenor rights only. Because the members of the pension plan are represented by counsel, for the purposes of this appearance it is sufficient to recognize the Superintendent’s status to lead evidence, cross-examine witnesses and make argument in relation to matters that form the basis of his decision on the wind up report and the Staff Report submitted to the Commission.

“Mr. J. Kruger”, Chairman
at Toronto, Ontario
this 13th day of June, 1989.



INDEX NO.: XDEC-03

PLAN: Dominion Stores Limited Retirement Income Plan (1975)
and the Dominion Stores Limited Retirement Income Plan
for Union Employees (1979), C-016249 (now Domgroup Ltd.)
C-005188

DATE OF DECISION: September 28, 1989

PUBLISHED: Bulletin 5/4 (Winter 1995)
Previously distributed to interested parties by mail.

September 28, 1989

Mr. Robert H. Hawkes
Superintendent
Pension Commission of Ontario
9th Floor
101 Bloor Street West
Toronto, Ontario
M7A 2K2

Mr. Mark Ziegler [sic]
Koskie & Minsky
Suite 800
481 University Avenue
Toronto, Ontario
M5G 2E9

Mr. David Moore
Lockwood, Bellmore & Moore
Suite 2100
439 University Avenue
Toronto, Ontario
M5G 1Y8

Gentlemen:

Re: Application by Trustees of Dominion Stores Union Pension Fund Settlement Trust with Respect
to Proposed Distribution Rules

At the resumption of the appearance before the Pension Commission of Ontario (the "Commission") in relation to the above captioned, on August 29, 1989, Mr. Moore withdrew his objection to the Trustees' proposed scheme of distribution with the exception of one specific aspect, that being the locking-in requirement. As a result, the Commission has only two issues before it. The first is whether the Commission has jurisdiction to

entertain an application of this sort. If the Commission finds that it does have jurisdiction then it is asked to bless the proposed distribution scheme and to rule on the locking-in requirement. Before giving the Commission's decision, it is important to review the facts and law relating to these matters.

Facts

This matter began as an application by Dominion Stores Limited (now Domgroup Ltd.) under sections 79(1) and 80(4) of the Pension Benefits Act, 1987 (the "Act") and section 7a(2)(c) of Ontario Regulation 708/87, as amended, (the "Regulations") for Commission consent to the payment out of surplus funds. Consent was given and the initial matter concluded whereupon the Trustees of Dominion Stores Union Pension Fund Settlement Trust (the "Trustees") made an application to be allowed an appearance before the Commission to seek approval of its proposed scheme of distribution amongst the plan beneficiaries (i.e. the plan members and retirees). Mr. Moore, as counsel for a group of dissident employees, opposed the proposed scheme of distribution on the basis that it was inequitable and unfair to his clients.

He also challenged the Commission's right to hear the matter on the basis that the Commission was without jurisdiction. After hearing oral argument and receiving written submissions on the matter of jurisdiction from all counsel, the Commission ruled that it would hear evidence on the merits of the matters in issue and make a determination thereafter.

When the hearing resumed, counsel for the dissident employee group withdrew his opposition to the proposed scheme of distribution with the exception of one item, namely the requirement that when the funds were distributed to persons under the age of 65 they had to go into locked-in vehicles. This requirement had been inserted into the proposed distribution scheme at the suggestion of the Superintendent of the Pension Commission of Ontario.

Issue

The Commission must determine whether it has jurisdiction to consider questions of fairness and equity relating to the distribution of the remaining surplus. If the Commission rules that it has jurisdiction, then it must decide whether the Trustees' proposed scheme of distribution is acceptable with particular reference to the locking-in requirement.

Jurisdiction

The Commission is a creature of statute. As such, it has no inherent power. Its jurisdiction and powers are those conferred on it by the enabling legislation.

Section 97 of the Act sets out the duties of the Commission as:

97. It is the duty of the Commission

- (a) to administer this Act and the regulations;
- (b) to promote the establishment, extension and improvement of pension plans throughout Ontario;
- (c) To advise the Minister in respect of the business of the Commission; and
- (d) to make recommendations to the Minister in respect of pension plans.

While the duties are set in general terms in the Act, there is no comparable section setting out generally the powers of the Commission. Thus, we must turn to specific sections in the legislation to see whether expressly, or by implication, jurisdiction has been conferred upon the Commission to rule on questions relating to the distribution of surplus to plan beneficiaries.

The power given in subsection 80(1) of the Act empowers the Commission to consent to payment out of surplus to an employer from a continuing pension plan. Clearly, this section is of no assistance as the proposed payments out are to the plan beneficiaries, not the employer and the plan in question is being wound up, not continued.

Section 7a(2) of the Regulations also relates to payments out of surplus. Subsection 7a(2)(a) does not apply as the section is simply permissive and does not confer any decision-making power upon the Commission.

Subsection 7a(2)(b) confers power upon the Commission to consent when surplus is going to an employer, thus, it does not apply.

Finally, subsection 7a(2)(c) does not apply as it refers back to subsection 79(1) of the Act which in turn refers to surplus distribution to the employer.

Subsection 80(4) of the Act warrants closer consideration however. It reads as follows:

80(4) the Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or part unless:

- (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
- (b) the pension plan provides for payment of surplus to the employer on the wind-up of the pension plan;
- (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of termination of the pension plan; and
- (d) the applicant and the pension plan comply with all other requirements prescribed under the other sections of this Act in respect of the payment of surplus moneys out of a pension fund.

Is section 80(4) broad enough in its terms to encompass an application of the sort before us? We are of the opinion that it is. A plain reading of the section shows that the key words are “an application”, “in respect of a pension plan that is being wound up”. In the case at hand, the Trustees have made an application and it clearly is in respect of a pension plan that is being wound up.

It was argued before us that the subsection was meant only to govern situations where money is being paid to an employer. The first response is that such a limitation does not appear and should not be assumed. Had the legislature wished such a limit it could easily have said so as was done in subsection 79(1) and subsection 80(1). Subsection 80(1) relates to Commission consent to payments out of ongoing plans; subsection 80(4) relates to Commission consent to applications in respect of plans being wound up. Had the legislature wished, it could have mirrored subsection 80(1) in subsection 80(4) but it chose not to. One can only assume that the different words were intentional and we would not willingly impose limits on our jurisdiction where none appear.

Is an interpretation of subsection 80(4) borne out when looked at in the context of the surrounding sections? We believe it is. Consider subsection 80(1)(b). The words “employer” and “applicant” are used as two separate entities. Surely had it been envisioned that only employers might apply for Commission consent the word employer would have been used throughout. The word “applicant” - not employer - is also used in subsection 80(1)(f).

We are fortified in our view of the legislation by two things. First, had the Trustees’ application been part of the original application by Domgroup we could have heard the matter by virtue of our powers under subsection 80(8) to attach such conditions and limitations to our consent as considered necessary. In consenting to the

Domgroup application we may very well have held it necessary to have an approved distribution scheme in place for the members' portion of the surplus. It would be unseemly to have procedural niceties dictate the ambit of Commission jurisdiction and we feel confident that the legislature would not have intended such.

Second, we are mindful of the watchdog role that Mr. Justice Reid found the Commission to hold in **Re Collins v. Pension Commission of Ontario**, (1986), 56 O.R. (2d) 275 at page 285.

It is difficult to imagine why the Commission was established without accepting that its principal function was to protect the interests of plan members... While an attempt was made before us to depreciate the PCO's role as watchdog over the interests of plan members, to the extent of a suggestion that its consent really was of no effect at all, it can hardly be suggested that plan members had no interest at all in the decisions of the Commission.

Surely, as a "watchdog over the interests of plan members" and in light of subsection 80(4), the Commission should review such matters as distribution schemes.

The approach of the Divisional Court in the **Collins** case is of particular significance as there it took the approach that jurisdiction must be assumed in order to ensure the proper functioning of the legislation in question, the predecessor act to the **Pension Benefits Act, 1987**, which contained very many fewer functions for the Commission. Note as well, the Divisional Court's comments on the role of the Commission in surplus matters at pages 293-4.

The existence of surplus funds creates the necessity, or at least the desirability, of dealing with them. The Commission is there to ensure that plans are properly funded, not over-funded. I think, therefore, that the consideration of what to do with surplus funds of current plans is both desirable and necessary. If that is so, the absence of any reference to it in the Act is not of critical significance, nor, since there is reference to the disposition of surplus funds in the Act, can it be said that to regulate surplus funds would be contrary to the Act.

Finally, our view of the legislation and subsection 80(4) is made within the context that the Commission is a fiduciary.

First, it appears that the Commission was established to ensure that certain interests were protected. While there is no doubt that those interests included the employer's, there appears to be equally no doubt that the Commission was established to safeguard the plan members' interests as well. The Commission, in effect, acknowledges that in its guidelines which stress its concern to prevent the removal of so much of the surplus funds from a plan that would endanger the plan's solvency. While the Commission may not, strictly speaking, be a trustee for the members, for it holds no money belonging to the plan, it would be artificial to conclude that the Commission's obligation to members is lower than the high standard of fiduciary obligation imposed on trustees (at page 255).

If we are wrong in our view of jurisdiction, we take some comfort from the fact that our views may be of some assistance to the courts. The Divisional Court had this to say in **Windsor Airline Limousine Services v. Ontario Taxi Association** (1980), 30 O.R. (2d) 732 at pages 734 to 735.

The company immediately objected to the Board's jurisdiction on the constitutional grounds that I have mentioned. The company has never waived [sic] from that position ... [the Board's decision] includes a very lengthy and careful review of the constitutional issue. The Board did that deliberately. I am conscious that an attitude prevailed in the not too distant past when that might have been deplored by the Court on the ground that the tribunal was dealing with an issue it was not competent to decide. I do not share that view. I agree with the Board's position. The Board's extensive consideration of the constitutional issue in this

case was helpful to me at least, and I believe to my colleagues on the Court, when the matter came here for resolution, I think it is helpful in general to have a tribunal address itself to an issue of this type. Among other things, it conduces to the elicitation of the facts relevant to the issue. We might be wholly without them if the tribunal simply threw up its hands and left the issue to the Courts.

The question thus becomes whether the Commission will consent to the Trustees' application. To answer that we must determine whether conditions 80(4)(a) through (d) have been met.

Subsection (a) requires the Commission to be satisfied that there is a surplus. The evidence is uncontroverted on that point. Subsection (b) requires that the pension plan provide for payment of surplus to the employer. The order of Mr. Justice O'Brien given February 27, 1989 in this matter varied the pension plans to bring the terms and conditions of the Settlement Agreement into the pension plans, a term of which provided for payment of a portion of the surplus to the employer. Thus, subsection 80(4)(b) is met. The wind-up report, as approved by the Superintendent of the Pension Commission of Ontario, fulfilled the requirement in subsection (c). We are satisfied after a complete and careful review that all other requirements of the Act have been complied with as subsection (d) requires.

Distribution Scheme

Having come [to] the conclusion that the Commission has jurisdiction in this matter, we must consider the merits of the proposed scheme of distribution.

As it turned out, no one contested the scheme and so perhaps there is no need to go further. We would be remiss however if we did not offer at least some thoughts on the adequacy of the scheme.

The process whereby the Trustees arrived at the distribution scheme appears prudent and appropriate. They first retained professional advisors in the form of legal counsel, consulting actuaries and an administrator. After an initial report from the actuarial firm, the Trustees established that any distribution formula would have to meet the following criteria: the formula had to comply with all relevant legislation, be fair, equitable and cost-effective, simple to administer and easy to explain to the plan members. As well, as the Plans were flat benefit plans under which a member's benefit was determined by multiplying years of service by a specified flat rate, the Trustees determined that a formula based on years of service would be fair and equitable. They instructed the actuaries to prepare a report using such a formula. The actuaries provided a number of such schemes to choose from and the Trustees met at various times to discuss them.

When the Trustees met to review the final report of the actuaries they also considered the distribution scheme suggested by Mr. Moore, on behalf of the dissident group of employees. The alternative scheme was rejected on the basis that it was overly complicated, inequitable and incomplete.

As a result of the Trustees' decisions, the distribution rules recommended by the actuaries were developed. They were finalized by the Trustees only after review by the actuaries, the administrator, the counsel for all parties to the Settlement Agreement and after informal discussions with the staff at the Pension Commission of Ontario.

Thus, *prima facie* the scheme and the method by which it was arrived at appears acceptable and an appropriate discharge of the duty of care owed by the Trustees as persons dealing with the property of another. The only reason for not giving the distribution scheme a more resounding approval is, as stated above, in the end no one contested the scheme and, as we all know, a contest sometimes yields surprising results.

Mr. Moore has asked that the Commission exercise its discretion and remove the locking-in provisions contained in the distribution scheme for Plan members under the age of sixty-five. Mr. Moore's argument was based on the needs of his clients who did not continue employment with the company or its successor: after reasonably long terms of employment they were forced to find other jobs with obvious consequent hardship.

While we feel sympathy for people in such circumstances, we cannot accede to such a proposition. The scheme of the legislation is to promote and improve pensions for Ontario employees. Sections 64 to 68 inclusive being the “Locking In” provisions of the Pension Benefits Act, 1987 sought to protect the principle that money which has been accumulated in a Pension Plan should provide a life time stream of income to an individual irrespective of age. This principle has guided the Commission extending back to the previous Pension Benefits Act (5-20) which became effective on January 1st, 1965.

The Commission’s role is to ensure that pension plan moneys are used to improve retirement income. Allowing Plan members to withdraw the moneys in cash would run counter to that objective and to our stated obligations under the Act to promote the improvement of pension plans throughout Ontario (section 97). Thus, we require the provision to apply to all Plan members regardless of age.

Yours truly,

“John P. Kruger”
Presiding Member

cc: Mr. H.P. Rolph
Ms. Lynne Gordon
Mr. Glenn Pattinson
Ms. Monica Townson
Ms. Eileen Gillese
Mr. Jean-Marie St. George

Retirement Income Plan for Union Employees (1979) and the Retirement Income Plan (1975) of Dominion Stores Limited (now Domgroup Ltd.) (C-)

An agreement of Settlement between Domgroup Limited (Domgroup) and the Union effective December 31, 1987 (the Settlement Agreement).

Distribution Rules established by the Trustees of the Retirement Income Plan for Union Employees of Dominion Stores Limited Settlement Trust (the Trustees) made as of July 11, 1988 (the distribution rules).

Matter:

Between Domgroup Ltd. (applicant)

and

Canada Trust Company, Donald G. Collins on behalf of all members of the Retail, Wholesale and Department Store Union, Local 414, (the "Union"), Bill Batchelor, Joe Calderone, Alan Dixon, Peter Garbel, Brad Gaul, Harold Pym and Dorothy Ritchie (the individual employees) (respondents)

DATE: March 9, 1989 (see transcript)
 (9:35 a.m.-12:40 p.m.) (c/r: Jodi Berkley)
 August 29, 1989 (see transcript)
 (9:50 a.m.-12:16 p.m.)
 (c/r: Rachel L.A. Rosenberg, CSR, CA)

PANEL: J. Kruger, Chairman, L. Gordon, Vice-Chairman, J.M. St. Georges, E. Gillese, M. Townson, G. Pattinson.

Counsel for the Applicant, DOMGROUP LTD.:
Michael A. Penny (Tory, Tory, DesLauriers & Binnington)

Counsel for Don Collins, The Union and three Trustees:
Mark Zigler

Counsel for Seven Former Employees:
David Moore, Rattray

Counsel for the Superintendent of Pensions:
Susan Rowland, Katherine Catton

Counsel for the Commission:
Hal Rolph

Registrar: Larry Martello (August 29, 1989)

EXHIBITS: Re Consent Application

MARCH 9, 1989
EXHIBIT 1

Application Record of Domgroup Ltd. (also ex. 2A)

1. Notice of Application returnable February 27, 1989 (170/80).
2. Order of Mr. Justice O'Brien dated January 20, 1989.
3. Affidavit of Jack A. Boulton sworn February 17, 1989.
EXHIBIT A: Notices of Application dated February 6, February 17 and August 22, 1986.
EXHIBIT B: Letter Agreement dated December 29, 1986.
EXHIBIT C: Agreement of Settlement dated December 30, 1987.
EXHIBIT D: Agreement of Approval dated December 30, 1987.
EXHIBIT E: Notice of Legal Proceeding Concerning Dominion Stores Pension Plan Surplus dated January 27, 1989.
EXHIBIT F: Advertisement "Attention: Re: Former Dominion Store Employees".
EXHIBIT G: Dominion Stores Limited Retirement Income Plan (1975) and amendments.
EXHIBIT H: Dominion Stores Limited Retirement Income Plan for Union Employees (1979).
4. Order of Mr. Justice O'Brien dated February 27, 1987 (170/89).
5. Wind-up Report for the Pension Plans for Union Employees sponsored by Domgroup Ltd. prepared by William M. Mercer Limited, October, 1988.
6. Affidavit of Sheila Block, sworn March 6, 1989 (170/89).
EXHIBIT A: Written responses to advertising.

EXHIBIT 2: Letter dated March 7, 1989 from Mr. Hawkes to William Mercer Limited giving the conditional approval of October 1988 wind-up report attached with letter March 6, 1989 to Mr. Hawkes from William Mercer.

EXHIBIT 3: Undertaking by Domgroup.

EXHIBIT 4: Applicant's Factum submitted by M. Penny, Tory, Tory, DesLauriers & Binnington.

EXHIBIT 5: Brief of Authorities of Domgroup Ltd. submitted by Tory, Tory.

EXHIBITS RE TRUSTEES APPLICATION

EXHIBIT 1A: Document entitled: "Written Submissions of the Trustees" submitted by Koskie and Minsky.

EXHIBIT 2A: Application Record of Domgroup Ltd.
(also Ex. 1)

EXHIBIT 3A: Letter dated February 10, 1989 to Mr. Hawkes from Mr. Zigler requesting this application be heard.

EXHIBIT 4A: Letter dated March 7, 1989 to Registrar from David Moore, Lockwood, Bellmore & Moore

EXHIBIT 5A: Policy Directive Request, January 4, 1988.

CONSENT: Consent of the Commission signed by J. Kruger sent to M. Penny March 23, 1989.

FURTHER SUBMISSIONS REQUESTED AT THE HEARING MARCH 9, 1989 RE RULES OF DISTRIBUTION

1. "Further Written Submissions of the Trustees" submitted by Koskie and Minsky on March 20, 1989.
2. "Written Submissions" submitted by Lockwood, Bellmore and Moore in response to the further written submissions of the Trustees.

Authority: Doctors Hospital and Minister of Health et al, 17 May 1976 (12 O.R. (2d))

MISCELLANEOUS CORRESPONDENCE

1. Signed copy of Agreement of Settlement made as of December 30, 1987 forwarded by Tory, Tory, February 16, 1989.
2. Letter, February 23, 1989, to Registrar from Koskie and Minsky with copy of Court documentation 236/89 "Application Record" by Koskie and Minsky.
3. Letter, April 20, 1989 to M. Zigler, D. Moore & S. Rowland from the Registrar.
4. Letter, May 26, 1989 to D. Moore (other parties copied) from J. Kruger.
5. Letter, May 3, 1989, to Registrar from D. Moore.

AUGUST 29, 1989:

EXHIBIT 6A: Letter dated July 11, 1989 from Koskie and Minsky to Lockwood, Bellmore and Moore.

EXHIBIT 7A: Letter dated August 14, 1989 from Lockwood, Bellmore and Moore to Ms. Catton.

EXHIBIT 8A: Letter dated August 24, 1989 from Lockwood, Bellmore and Moore to Ms. Catton.

EXHIBIT 9A: "Applicant's Documents, Volume 1" re: Trustees of Retirement Income Plan for Union Employees of Dominion Stores Limited Settlement Trust - Application re Surplus Distribution Formula submitted by M. Zigler, Koskie and Minsky, containing the distribution rules and certain related documents as follows:

1. Notice of Application returnable February 27, 1989 (236/89).

2. Order of Mr. Justice O'Brien dated February 7, 1989.

3. Affidavit of Jack A. Boulton sworn February 17, 1989.

EXHIBIT A: Notices of Application dated February 6 (356/86), February 17 (452/86) and August 22, 1986 (818/86).

EXHIBIT B: Letter Agreement dated December 29, 1986.

EXHIBIT C: Agreement of Settlement dated December 30, 1987.

EXHIBIT D: Agreement of Approval dated December 30, 1987.

EXHIBIT E: Notice of Legal Proceeding Concerning the Dominion Stores Pension Plan Surplus dated January 27, 1989.

EXHIBIT F: Advertisement "Attention: Re: Former Dominion Store Employees".

EXHIBIT G: Dominion Stores Limited Retirement Income Plan (1975) and amendments.

EXHIBIT H: Dominion Stores Limited Retirement Income Plan for Union Employees (1979) and amendments.

4. Affidavit of Ab Player, sworn February 15, 1989 with the following exhibits Tabs A - J.

4A **EXHIBIT 1:** Letter Agreement dated December 29, 1986.

4B **EXHIBIT 2:** Agreement of Settlement dated December 30, 1987.

4C **EXHIBIT 3:** Agreement and Declaration of Trust, effective November 17, 1987.

4D **EXHIBIT 4:** Handwritten Notes of Trustees' meeting held April 22, 1988.

4E **EXHIBIT 5:** Handwritten Notes of Trustees' meeting held June 1, 1988.

4F **EXHIBIT 6:** Minutes of Trustees' meeting held July 11, 1988.

4G **EXHIBIT 7:** Letter to Mr. Zigler from David Moore dated July 11, 1988.

4H **EXHIBIT 8:** Minutes of Trustees' meeting held August 11, 1988.

4I **EXHIBIT 9:** Distribution rules for Dominion Stores Settlement Trust Fund.

4J **EXHIBIT 10:** Letter to Mr. Zigler from the Department of National Revenue dated December 29, 1988.

EXHIBIT 10A: Volume II, Actuarial Reports submitted by Koskie and Minsky.

1. Johnson & Higgins Report - February 1988 "Report to the Trustees on the Division of Surplus under the Retirement Income Plan for Union Members of Dominion Stores Ltd."
2. Johnson & Higgins Report - June 1988.
3. Johnson & Higgins Report - July 1988.

EXHIBIT 11A: Letter dated July 28, 1989 from Ms. Catton to Mr. Moore and Mr. Zigler re the Superintendent of Pensions complying with the Commission's directions of May 26, 1989.

COMMISSION DECISION RE APPLICATION:

The Commission consents to the application from Domgroup for payment out of surplus an appointment of trustees in accordance with section 3.08 of the settlement agreement. To the extent that this consent would apply to Quebec members of the plan, it is subject to the approval of the appropriate regulatory authorities in that province. (See page 41 of the transcript.) Consent of the Commission dated March 1989.

COMMISSION DECISION ON JURISDICTION RE DISTRIBUTION AND REMOVAL OF LOCKING IN PROVISIONS IN THE DISTRIBUTION SCHEME FOR MEMBERS UNDER 65:

(See page 110 of transcript of August 29, 1989.) Decision of the Commission dated September 28, 1989. The Commission has jurisdiction and the locking-in provision applies to all plan members regardless of age.



INDEX NO.: XDEC-14

PLAN: Brewers Retail Pension Plan for Bargaining Unit Employees
C-254

DATE OF DECISION: August 26, 1992

PUBLISHED: Bulletin 5/4 (Winter 1995)
Previously distributed to interested parties by mail.

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c. P.8;

AND IN THE MATTER OF an Order dated August 4, 1992 by the Pension Commission of Ontario under Section 89 of the Pension Benefits Act, that the Superintendent carry out his Revised Notice of Proposal to Make an Order respecting the **Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number C-254;**

TO: Brewers Retail Inc.
79 St. Clair Avenue East
Toronto, Ontario
M4T 1M6

ATTENTION: Mr. J.R. Davidson, President

Employer and Administrator of the Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number C-254

ORDER

A REVISED NOTICE OF PROPOSAL TO MAKE AN ORDER requiring Brewers Retail Inc. as administrator of the Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number C-254 to increase the pension being paid to Mrs. Mary Benson was made by the Superintendent of Pensions, (the "Superintendent"), on March 12, 1992.

A HEARING required by Brewers Retail Inc. by notice dated March 25, 1992, was held by the Pension Commission of Ontario, (the "Commission"), on June 2, 1992, at which time the Pension Commission directed the Superintendent to carry out the Proposed Order contained in the Revised Notice of Proposal to Make an Order.

WRITTEN REASONS were issued by the Commission on August 4, 1992 in this matter.

1. **IT IS HEREBY ORDERED THAT**, in accordance with the decision of the Commission pursuant to subsection 89 (9) of the Pension Benefits Act, R.S.O. 1990, C.P.8., (the "Act"), incorporated herein by reference, the Administrator of the Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number C-254, (the "Pension Plan"), increase the pension being paid to Mrs. Mary Benson to sixty percent (60%) of the pension which was being paid to Mr. Harvey Cecil Benson at the time of his death. This adjustment is to be fully retroactive to the date of Mr. Benson's death and formal confirmation in writing is required within thirty (30) days that this adjustment has been made. This adjustment is to include interest from the date of Mr. Benson's death at the rate stipulated in subsection 21(9) of Ontario Regulation 708/87 as amended by Ontario Regulation 589/89 to the Act.

DATED at Toronto, Ontario this 26th day of August, 1992.

"D. Ross Peebles"

Superintendent of Pensions



INDEX NO.: XDEC-26

PLAN: Otis Elevator Company Limited Pension Plan for Draftsmen,
Local 164, C-017647

DATE OF DECISION: November 17, 1995

PUBLISHED: Bulletin 5/4 (Winter 1995)

IN THE MATTER OF an application by Otis Canada Inc., ("Otis") to the Pension Commission of Ontario with respect to the withdrawal of surplus from the Otis Elevator Company Limited Pension Plan for Draftsmen, Local 164.

Before: Eileen E. Gillese, Chair
Monica Townson, Vice Chair
Darcie Beggs, member
Don Collins, member
Joyce Stephenson, member

Appearances: On behalf of the applicant:
John A. Campion
Alan L.W. D'Silva

Counsel for the Superintendent:
Paul A. Dempsey
Shaun Devlin

Appearing in Person:
Al Ryznar
C.R. Maitland

Hearing Dates: October 6 and 7, 1994
Toronto, Ontario

Decision Released: November 17, 1994, Toronto, Ontario

REASONS FOR DECISION

Nature of the Application

Otis brought an application pursuant to the Pension Benefits Act, 1987 ("the Old Act") and the regulations in effect as at the date of the original filing of the application in 1988 in relation to the Otis Elevator Company Limited Pension Plan for Draftsmen Local 164 ("the Draftsmen Plan"). Otis sought the consent of the Pension Commission of Ontario ("the Commission") to the payment to it of surplus funds in the amount of \$1,191,939.00 as at October 31, 1987, plus investment income thereon.

The numbering of the relevant sections in the Act changed midway through the course of this application; for the sake of clarity and convenience, we will refer to the sections of the current Pension Benefits Act, R.S.O. 1990, c.P.8 ("the Act") throughout these reasons and have set out the relevant portions of the Act in Appendix "A".

History of the Plan

As the facts are not in dispute, the summary contained in a previous Commission decision in this matter, dated February 9, 1989, will suffice. The entire text of that decision is contained in Appendix "B" to these reasons. Otis prepared a diagram which was very helpful in understanding the facts; it is set out in Appendix "C".

Facts

On December 31, 1981, two pension plans existed at Otis: the Otis Elevator Company Limited Contributory Pension Plan (the "Contributory Plan") and the Non-Contributory Plan for employees of Otis Elevator Company Limited (the "Non-Contributory Plan"). Salaried employees, including all draftsmen, were members of both the Contributory and Non-Contributory Plans.

Effective January 1, 1982, two major events occurred. First, the Contributory and Non-Contributory plans were merged to become the Otis Canada, Inc. Pension Plan for Non-Bargaining employees (the "Non-Bargaining Plan"). Second, the draftsmen at the Otis Hamilton plant became unionized and the Draftsmen's Association of Ontario Local 164 (I.F.P.T.E.) ("Draftsmen Local 164") was certified to bargain for the draftsmen. As a result, Otis implemented the Otis Elevator Company Limited Pension Plan for Draftsmen Local 164 (the "Draftsmen Plan") for those employees who were members of the Draftsmen Local 164. Otis indicates assets sufficient to fund pensions for service accrued prior to January 1, 1982 for members of the Draftsmen Plan (who) were transferred from the Contributory Plan and the Non-Contributory Plan to the Draftsmen Plan.

As at January 1, 1986, there were six active members of the Draftsmen Plan. Due to a reorganization of Otis, the members of the Draftsmen Plan were no longer required at the Hamilton location after January 1, 1986. The six active members took up employment with Otis at its Oakville office. Since the Draftsmen Local 164 was certified only in respect of the Otis Hamilton location, it did not hold bargaining rights at the Oakville office. As such, it no longer represented the six transferred employees.

A wind up report on the Otis Canada, Inc. Pension Plan for Draftsmen Local 164 was prepared effective October 31, 1987. As at that date, assets relating to the transfer to the Non-Bargaining Plan in respect of six active members, some \$184,163 and assets associated with the purchase of annuities, some \$363,874, were still being held in the Draftsmen fund. After accounting for these items, the Actuary found a surplus remaining of approximately \$1,191,939. The Report also stated that the date of discontinuance of the Draftsmen Plan was January 16, 1987.

On December 29, 1987, notice was given to all former members of the Draftsmen Plan of the wind up report and Otis' intention to request, from the Commission, consent to the payment of the surplus remaining in the Draftsmen Plan to Otis.

The wind up report was submitted to the Superintendent on or about January 5, 1988. On November 5, 1988, the Superintendent issued a Notice of Proposal to refuse approval of the Draftsmen Plan wind up report. It is as a result of that Notice of Proposal that Otis required a hearing by the Commission.

History of the Application

The wind up report for the Draftsmen Plan was submitted to the Superintendent of Pensions (the "Superintendent") on or about January 5, 1988. The Superintendent issued a Notice of Proposal to refuse approval of the Draftsmen Plan wind up report on the basis that subsection 81(1) of the Act precluded him from granting approval. Pursuant to section 89 of the Act, Otis requested a hearing before the Commission asking that the Commission direct the Superintendent to approve the wind up report. On February 9, 1989 the Commission issued its decision, holding that the Non-bargaining Plan was a "successor" to the Draftsmen Plan within the meaning of subsection 81(1) of the Act and directing the Superintendent to carry out the proposal to refuse to approve the wind up report. (It is this original decision of the Commission in respect of the Draftsmen Plan which is found in Appendix "A".)

Otis appealed the Commission's decision in respect of the wind up report to the Ontario Divisional Court. Divisional Court accepted the Commission's determination that the Draftsmen Plan was a successor plan but allowed the appeal. The order of Divisional Court, made on March 18, 1992, is set out below.

(1) **THIS COURT ORDERS THAT** the Pension Commission's finding that the Otis Pension Plan for Non-Bargaining Employees was a "successor" to the Draftsmen Plan pursuant to s. 81(1) of the New Act is upheld and;

(2) **THIS COURT ORDERS THAT** the appeal be allowed and the matter be returned to the Pension Commission. In order to gain the Pension Commission's consent to release the surplus, the terms and conditions set out in section 79 of the New Act must be applied by the Pension Commission.

Divisional Court released reasons for its order, as well, on March 18, 1992.⁽¹⁾ Both the order and the reasons are appended in full, as Appendix "D". When referring to the order and reasons of Divisional Court henceforth in our reasons we will refer to them as "the Divisional Court Order and Reasons". As will be seen, their terms are critical to the determination of the major issue in this matter.

The Wind up Report

After Divisional Court issued its order and reasons, a number of other legal proceedings took place but the next step of relevance to our decision relates to the wind up report. In a letter dated May 11, 1994 from the Superintendent to the Plan's actuary, Mr. Davies, the Superintendent approved payment of basic benefits and stated that "final approval" of the wind up report was subject to the Commission's decision with respect to surplus.

Although there was much debate between counsel for the Superintendent and counsel for the Applicant about what the Superintendent actually did, we find that the Superintendent approved the wind up report. We accept that the letter of May 11, 1994, was the standard letter issued by the Superintendent when he approves a wind up report. The statement that "final approval" of the wind up report is subject to the Commission's decision with respect to surplus is no more than explicit recognition by the Superintendent that he does not have jurisdiction to approve surplus distribution to an employer as that authority is expressly given to the Commission by sections 78 and 79 of the Act. In stipulating that "final approval" is subject to the Commission's decision he is only making it clear that his approval of the wind up report is not to be taken as somehow suggesting that he or the staff of the Commission are of the view that the surplus should be returned to the employer.

⁽¹⁾ *Otis Canada Inc. v. Ontario (Superintendent of Pensions)* (1992), 89 D.L.R. (4th) 746 (Ont. Ct. (Gen. Div.)(Div. Ct.).

The Role of the Superintendent

Otis took the position that as the Superintendent had approved the wind up report, he was functus officio.

“Otis respectfully submits that the Superintendent, having granted its approval of the wind up report, has no interest in the surplus issue except as follows. The Superintendent should be entitled only to make submissions with respect to the fact that a decision was made, and only if the Commission requires such information, but not the meaning or interpretation of its decision. The Superintendent is not entitled to make submission on the surplus issue at large before the Commission.”

Otis went on to submit that the Commission should not obtain legal advice on the matter from the Superintendent's counsel and requested the right to be in attendance at any meeting where the matter was discussed.

This latter point can be dealt with quickly but we wish to draw attention to our response and thereby clear up any misconceptions that may exist about our procedures. The Commission performs many different functions; at times we formulate policy, at other times we perform administrative functions, sometimes we decide uncontested matters and sometimes we decide hotly contested matters. We are extremely careful to identify, in advance, the type of activity we will be engaged in and to then follow procedures which are in compliance with basic principles of fairness. In matters where the Superintendent takes a position, we treat him as if he were a party. We do not consult with his counsel; we do not speak to him, his counsel or the staff -- or anyone else -- unless all parties are present. All communication between the Superintendent (and his counsel) and the Commission is through the Registrar, which is the same rule that exists for all parties.

The matter of the Superintendent's standing warrants more comment. The Superintendent wished to make representations with respect to the procedures which Otis had to follow in its application for surplus. Specifically, the Superintendent was of the view that the Divisional Court Order and Reasons had the effect of stipulating that Otis had to follow the rules provided for accessing surplus from continuing plans. Otis maintained that the appropriate rules were those for wound up plans. In short, Otis maintained that subsection 79(3) applied to its surplus application whereas the Superintendent took the position that subsection 79(1) applied. As mentioned previously, Otis was also of the view that the Superintendent, being functus officio, had no right to be heard by the Commission in respect of the merits of the application including the appropriate rules to be applied in hearing the application.

At the hearing, we granted the Superintendent standing and outlined our reasons with the promise that written reasons would be included in our decision on the application.

The Issues

In addition to resolving the preliminary issue on standing, two other issues must be resolved in order to decide Otis' application.

- (1) What subsection of the Act should the Commission apply to Otis' surplus withdrawal application? Subsection 79(1) which governs withdrawal from continuing plans or subsection 79(3) which governs withdrawals from wound up pension plans?
- (2) Regardless of which subsection governs the application, has Otis satisfied the requirements of the Act and regulations so that it is entitled to receive Commission consent to the payment of surplus funds to it?

Preliminary Issue: Does the Superintendent have Standing?

In an application by Otis to withdraw surplus from the wound up pension plan for Steel Workers Local 7062 ("the Steel Workers application"),⁽²⁾ the issue of the standing of the Superintendent was decided by this Commission in the following words.

"We find it unnecessary to decide for all purposes whether the Superintendent has full status or limited intervenor rights only. Because the members of the pension plan are represented by counsel, for the purposes of this appearance it is sufficient to recognise the Superintendent's status to lead evidence, cross-examine witnesses and make argument in relation to matters that form the basis of his decision on the wind up report and the Staff Report submitted to the Commission."

As the question of the Superintendent's status has been raised again and as our previous decision was qualified, we will respond more generally with the expectation that it will provide greater certainty on this issue in future cases.

We granted the Superintendent standing in this matter for many of the same reasons as are set out in our decision on the Steel Workers application; we will not repeat ourselves in full. Those who wish to can refer to the full text of that decision. In summary fashion, we reasoned as follows.

The Act expressly grants party status on the Superintendent in proceedings held pursuant to section 89. Nothing is said, in the Act, about the Superintendent's role or status in respect of a surplus application such as the one before us. Silence in the legislation does not lead automatically to the conclusion that he is excluded from these proceedings. Rather, silence leads us to the view that the Commission, as the master of its own processes, has the right and power to determine whether to grant the Superintendent status.

In determining whether to grant the Superintendent status, we were guided by the principles which underlie the granting of intervenor status and the role of the Commission in deciding surplus matters. The Collins case⁽³⁾ established that the Commission is a fiduciary when deciding surplus matters and, as such, is obliged to bear in mind the interests of both the plan beneficiaries and the employer. In order to have both sets of considerations before us, the matter must be fully argued. In this application, the Plan members are unrepresented. Unlike the courts, we have no power to order representation on their behalf. If we do not hear from the Superintendent on these types of questions which are extremely complex, complicated and legal, how will both sides be argued? How could we be confident that we were able to make a proper determination? Without hearing from the Superintendent, the Commission would be in a completely invidious position. The Commission would run the risk of breaching its fiduciary responsibilities if it did not fairly consider the case from the Plan members perspective. However, the Commission itself could not raise and argue propositions contrary to that of the applicant as to do so would be clearly contrary to the basic principles of fairness. By allowing the Superintendent to make submissions, Otis knew the case it had to meet and the Commission could maintain its impartiality and not have to "descend into the arena".

By granting the Superintendent status, we are confident that we have fully heard argument on both sides of these difficult legal matters which include the meaning of the Divisional Court decision, the proper interpretation of the Act and the impact of the decision on the administration of the Act. As we said in the Steel Workers application "A refusal to permit the Superintendent to take part in the appearance may create the situation where the Commission is more likely to operate without full knowledge and therefore risk breaching its responsibilities". In this case, where the Plan members are unrepresented, this consideration is all the more important.

⁽²⁾ Otis Canada Inc. v. Steel Workers Local 7062 (1990), unreported, (Pension Commission of Ontario).

⁽³⁾ Re Collins et al and Pension Commission of Ontario et al. (1986), 56 O.R. (2d) 274 (Div. Ct.)

The above reasons are sufficient, in our view, to warrant granting the Superintendent standing. However, the nature of the matters in issue and the history of the application made it all the more vital for the Commission to hear from the Superintendent. It will be recalled that the matter in issue is what rules are to apply to the Otis surplus withdrawal application. Subsection 94(3) of the Act specifies that the Superintendent is the chief administrative officer of the Pension Commission. As such, he has an interest in ensuring that the Act and regulations are duly administered and he has a legitimate role to play in making known to the Commission considerations which will or may affect the administration of the Act and regulations in other cases.

As well, the Superintendent was a party to the original Commission hearing and appeal to Divisional Court. The key issue in this case is based, at least in part, on the meaning of the reasons of Divisional Court. The Commission found it would be of use to hear the Superintendent's submissions, as well as those of Otis, on the meaning of what was said by the court.

In the result, we granted the Superintendent status and will do so in future, absent very unusual circumstances.

Issue #1: What Provisions Apply to Otis' Application?

Res judicata

The Superintendent submitted that this issue (i.e. what are the appropriate procedures for Otis to follow in its application for withdrawal of surplus) was res judicata. It maintained that the matter had been decided by the Divisional Court Reasons of March 18, 1992. The statements upon which the Superintendent relies are set out now.

The Draftsmen Plan, as amended, contains the following clause which appears to contemplate the removal of surplus from the pension plan:

In the case of termination of the Plan or in the event of discontinuance of contributions having the effect of such termination, the Plan's Fund shall be used for the exclusive benefit of Members or their beneficiaries..., except that any part of the Fund not required to satisfy all liabilities of the Plan for benefits shall, with the approval of the Pension Commission of Ontario, be returned to the Company.

It is not clear whether this clause is applicable in the case of a continuing plan, the significance of which will be explained below. But the determination of this issue is something that must be left to the Commission.⁽⁴⁾ (emphasis added)

And

In our view, however, even though the Commission correctly characterized the Non-Bargaining Plan as a successor to the Draftsmen Plan the effect of the applicability of section 81(1) is not to preclude the approval of the wind up report. This provision is not relevant per se to the issue of winding up. Section 81(1) contemplates that a "predecessor" plan can be wound up in fact but as a legal fiction be deemed to continue to exist, thus providing further protection to the members of the former plan. Even though wound up, it is for all purposes to be treated as a continuing plan. In other words, where the circumstances are such that a winding up of the Plan is appropriate under the relevant provisions of the Act then the approval to the winding-up should be granted. Subsection 81(1) is not relevant to that issue.

⁽⁴⁾ supra, at p. 749

In the present case, since the Non-Bargaining Plan was correctly found to be a successor to the Draftsman Plan, the Draftsman Plan is deemed not to be wound up, that is, it should be considered to be a continuing plan for the purposes of the Act. In order to gain the Commission's consent to release the surplus the terms and conditions set out in section 79 must be applied by the Commission.⁽⁵⁾ (emphasis added)

We do not accept that this issue is *res judicata*. The matter on appeal to the Divisional Court was the Commission decision refusing to direct the Superintendent to approve the wind up report. Divisional Court stated that the point in issue was:

The issue in this appeal concerns the applicability of s. 81(1) and whether the Commission, relying on s. 81(1), was correct in refusing to approve the wind-up report for the Draftsman Plan.⁽⁶⁾

We accept that portions of the reasons are directed towards the issue of whether Otis' application for surplus withdrawal was to be treated as a withdrawal from a continuing or a wound up plan and, indeed, as will be evident below, we accept the court's directions in that regard. However, the doctrine of *res judicata* is designed to prevent parties from re-litigating a point which has been previously decided on its merits. While Divisional Court offered much guidance on the issue, it is not clear that it fully heard argument on the very point. If it did, we wonder why there was no express mention of the two subsections in question and why the court would not have expressly stipulated that the Commission was to hear the application according to subsection 79(1) procedure. Instead, the court refers to section 79 which creates some ambiguity as, obviously, section 79 encompasses both 79(1) and 79(3). It would also seem that Divisional Court would have listed it as an issue or sub-issue to be addressed whereas the issue identified by the court as needing resolution was the applicability of subsection 81(1).

Continuing or wound up plan for purposes of a surplus application?

Having rejected the argument that the matter is *res judicata*, the Commission must decide whether Otis must follow the procedures set out in subsection 79(1) or those contained in subsection 79(3). In so deciding, we are influenced by the reasons of the Divisional Court and the role and function of subsection 81(1). As explained below, both lead to the same conclusion, namely, that the procedures to be followed by Otis in its surplus application are those that govern surplus withdrawal from continuing plans.

Reasons of Divisional Court

In the Divisional Court Reasons, the court said

"It is not clear whether this clause is applicable in the case of a continuing plan, the significance of which will be explained below."⁽⁷⁾ (emphasis added)

The court went on to hold that the Commission correctly characterized the Non-Bargaining Plan as a successor to the Draftsman Plan and that subsection 81(1) applied. The appeal was allowed on the basis that the fact that subsection 81(1) applied was not grounds for refusing to consider the acceptability of the wind-up report.

The next two lines in the judgment are critical.

"Section 81(1) contemplates that a "predecessor" plan can be wound up in fact, but as a legal fiction be deemed to continue to exist, thus providing further protection to the members of the former plan. Even though wound up, it is for all purposes to be treated as a continuing plan."⁽⁸⁾

⁽⁵⁾ at pp. 750-51.

⁽⁶⁾ at p. 749.

⁽⁷⁾ at p. 749

⁽⁸⁾ *ibid*.

Arguably, the statements in respect of whether the plan was a continuing one for the purposes of surplus withdrawal are obiter. If they are, we are of the view that they are designed to assist the Commission and we are to be guided by them. Indeed, as an inferior body, we must follow them in light of the concluding sentence in the judgment:

“Appeal allowed and the matter returned to the Commission to be dealt with in a manner consistent with these reasons.”⁽⁹⁾

Any ambiguity that might arise by the court’s reference to section 79, as opposed to subsection 79(1), is offset by its clear statements that the matter is to be decided on the basis that the Plan is a continuing one. We are confident that the court, in stating that “it is for all purposes to be treated as a continuing plan”, has directed us to deal with the surplus application on the basis of subsection 79(1), the provisions which apply to continuing plans.

Having been told by the court that we are to deal with the application in a manner consistent with its reasons, we could now simply dispose of the application. However, as Otis urged us to consider the question of procedure afresh, we will first set out our own views on why the procedures applicable to continuing plans are the appropriate ones to be applied.

The effect of subsection 81(1) on surplus withdrawal applications

One critical point must be kept in mind. The Plan is not “wound up”. In its written submissions, Otis maintained that it was “wound up” although counsel backed away from that stance at the hearing. The words “wind up” have a precise meaning; they are defined in section 1 of the Act as follows.

“wind up” means the termination of a pension plan and the distribution of the assets of the pension fund;

Thus, a plan can be terminated as, for example, where contributions cease to be made to it but that plan is not necessarily wound up. It will not be wound up until all the assets in the pension fund have been distributed. In the case before us, the Plan could be said to be terminated but it cannot be said to be wound up as all the assets have not been distributed. This distinction between termination and wind up explains why, in subsection 79(3), the Act provides for Commission consent to applications “in respect of a pension plan that is being wound up ...”.

For the same reasons, the fact that the Superintendent approved Otis’ wind up report does not make the Plan wound up.

But, the question remains, should the application be considered under the terms of subsection 79(3) on the basis that it is being wound up? In our view, the answer to that question is “no”. The Commission and the courts have found that the Non-Bargaining Plan is a successor to the Draftsman Plan within the meaning of subsection 81(1). That determination leads to the conclusion that the Draftsman Plan is deemed not to be wound up. If it is deemed not to be wound up, it must be continuing.

Apart from being compelled to that conclusion by the language of subsection 81(1), we are drawn to the conclusion by the purpose which underlies subsection 81(1). The purpose of the subsection is to provide further protection to members of predecessor plans. Subsection 81(1) gives employees the security of recourse to predecessor plans. Subsection 81(1) also prevents employers from gaining access to surplus by moving employees from one plan to a different pension plan and then taking the surplus that remains in the first plan.

⁽⁹⁾ *ibid.*

If Otis follows the surplus procedures contained in subsection 79(3) of the Act, it will be able to remove all of the surplus and the Plan would truly be wound up as all the assets will have been distributed. However, if Otis follows the surplus procedures contained in subsection 79(1), it must leave a certain “cushion” of assets in the plan.⁽¹⁰⁾ This obviously provides “further protection” to the Plan members.

Otis maintains that if the Commission requires it to proceed on the basis of the provisions governing continuing plans that the Commission will be acting inconsistently with previously decided cases. This is not so. This is the first case of this sort that we have had to decide. Otis points to the Otis Steelworkers application. That, however, is distinguishable as there was no issue whatsoever about a successor plan. The plan in that case was simply wound up.

Otis points as well to Sara Lee Corporation v. McNaughton et al⁽¹¹⁾. Again, that case is clearly different from the one before us. In Sara Lee, a popsicle division was sold and the part of the pension plan that related to the popsicle division was wound up. There was a specific finding by Mr. Justice Yates, in the case, that

“Here Popsicle had been severed and the plan is “deemed to be terminated with respect to such employer”. As a result there is no “continuing pension plan” ...”⁽¹²⁾

In Otis’ case, there has been an express finding by the Commission and the court that the Draftsman Plan is a continuing plan.

In conclusion, we hold that Otis must satisfy the provisions of subsection 79(1) of the act in order to obtain our consent to surplus withdrawal.

Issue #2 Does Otis succeed in its application?

The answer quite simply is that it cannot succeed. Otis freely admitted that its application was brought pursuant to subsection 79(3) and that it was not prepared to have it considered pursuant to subsection 79(1). The Commission invited Otis to make its application in the alternative (i.e. under each of the subsections) but Otis refused on the basis that the application was brought solely under subsection 79(3). Therefore, there is no evidence before the Commission which would enable it to find that Otis had met the requirements of subsection 79(1).

CONCLUSION

The application is dismissed.

Dated this 17th day of November, 1994, at Toronto, Ontario.

Eileen E. Gillese, Chair
Monica J. Townson, Vice Chair
Darcie L. Beggs, member
Donald G. Collins, member
Joyce A. Stephenson, member

⁽¹⁰⁾ See clauses 79(1)(c), (d) and (e) of the Act.

⁽¹¹⁾ [1989] O. J. No. 2597 (Ont. H.C.J.)

⁽¹²⁾ at pp. 5-6

APPENDIX "A"
RELEVANT LEGISLATION

ss 78.--(1) No money may be paid out of a pension plan to the employer without the prior consent of the Commission.

ss 79.--(1) The Commission shall not consent to payment of money that is surplus to the employer out of a continuing pension plan unless,

- (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
- (b) the pension plan provides for the withdrawal of surplus by the employer while the pension plan continues in existence, or the applicant satisfies the Commission that the applicant is otherwise entitled to withdraw the surplus;
- (c) where all pension benefits under the pension plan are guaranteed by an insurance company, an amount equal to at least two years of the employer's current service costs is retained in the pension fund as surplus;
- (d) where the members are not required to make contributions under the pension plan, the greater of,
 - (i) an amount equal to two years of the employer's current service costs, or
 - (ii) an amount equal to 25 per cent of the liabilities of the pension plan calculated as prescribed,

is retained in the pension fund as surplus;

- (e) where members are required to make contributions under the pension plan, all surplus attributable to contributions paid by members and the greater of,
 - (i) an amount equal to two years of the employer's current service costs, or
 - (ii) an amount equal to 25 per cent of the liabilities of the pension plan calculated as prescribed,

are retained in the pension fund as surplus; and

- (f) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus money out of a pension fund.

ss. 79.--(2) A pension plan that does not provide for the withdrawal of surplus money while the pension plan continues in existence shall be construed to prohibit the withdrawal of surplus money accrued after the 31st day of December, 1986, 1987, c. 35, s. 80(1, 2).

ss. 79.--(3) The Commission shall not consent to an application in respect of a pension plan that is being wound up in whole or in part unless,

- (a) the Commission is satisfied, based on reports provided with the application, that the pension plan has a surplus;
- (b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan;
- (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of termination of the pension plan; and

- (d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus money out of a pension fund.

ss. 81.--(1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan shall be deemed not to be wound up and the new pension plan shall be deemed to be a continuation of the original pension plan.

APPENDIX "B" INITIAL DECISION OF THE PENSION COMMISSION OF ONTARIO

In the matter of an application by Otis Canada Inc., to the Pension Commission of Ontario.

And in the matter of an appeal from a proposal by the Superintendent of Pensions to refuse to approve a wind up report under subsection 71(5) of the Pension Benefits Act, 1987 S.O. 1987, c. 35, respecting the Otis Canada, Inc. **Pension Plan for Draftsmen Local 164**;

The applicant, Otis Canada, Inc. ("Otis"), received a Notice of Proposal issued by the Superintendent of Pensions (the "Superintendent") to refuse approval of a wind up report for the Otis Elevator Company Limited Pension Plan for Draftsmen Local 164 pursuant to subsection 90(4) of the Pension Benefits Act, 1987, S.O. 1987, c.35 (the "Act"). Approval of the wind up report is a necessary precondition to obtaining the approval of the Pension Commission of Ontario (the "Commission") to a surplus withdrawal pursuant to subsection 79(1) of the Act. Pursuant to subsection 90(6), Otis required a hearing by the Commission with respect to the Notice of Proposal.

Facts

On December 31, 1981, two pension plans existed at Otis: the Otis Elevator Company Limited Contributory Pension Plan (the "Contributory Plan") and the Non-Contributory Plan for employees of Otis Elevator Company Limited (the "Non-Contributory Plan"). Salaried employees, including all draftsmen, were members of both the Contributory and Non-Contributory Plans.

Effective January 1, 1982, two major events occurred. First, the Contributory and Non-Contributory plans were merged to become the Otis Canada, Inc. Pension Plan for Non-Bargaining employees (the "Non-Bargaining Plan"). Second the draftsmen at the Otis Hamilton plant became unionized and the Draftsmen's Association of Ontario Local 164 I.F.P.T.E. ("Draftsmen Local 164") was certified to bargain for the draftsmen. As a result, Otis implemented the Otis Elevator Company Limited Pension Plan for Draftsmen Local 164 (the "Draftsmen Plan") for those employees who were members of the Draftsmen Local 164. Otis indicates assets sufficient to fund pensions for service accrued prior to January 1, 1982 for members of the Draftsmen Plan (who) were transferred from the Contributory Plan and the Non-Contributory Plan to the Draftsmen Plan.

As at January 1, 1986, there were six active members of the Draftsmen Plan. Due to a reorganization of Otis, the members of the Draftsmen Plan were no longer required at the Hamilton location after January 1, 1986. The six active members took up employment with Otis at its Oakville office. Since the Draftsmen Local 164 was certified only in respect of the Otis Hamilton location, it did not hold bargaining rights at the Oakville office. As such, it no longer represented the six transferred employees.

A wind up report on the Otis Canada, Inc. Pension Plan for Draftsmen Local 164 was prepared effective October 31, 1987. As at that date, assets relating to the transfer to the Non-Bargaining Plan in respect of six active members, some \$184,163 and assets associated with the purchase of annuities, some \$363,874, were still being held in the Draftsmen fund. After accounting for these items, the Actuary found a surplus remaining of approximately \$1,191,939. The Report also stated that the date of discontinuance of the Draftsmen Plan was January 16, 1987.

On December 29, 1987, notice was given to all former members of the Draftsmen Plan of the wind up report and Otis' intention to request, from the Commission, consent to the payment of the surplus remaining in the Draftsmen Plan to Otis.

The wind up report was submitted to the Superintendent on or about January 5, 1988. On November 5, 1988, the Superintendent issued a Notice of Proposal to refuse approval of the Draftsmen Plan wind up report. It is as a result of that Notice of Proposal that Otis required a hearing by the Commission.

Issues

The Superintendent's refusal to approve the wind up report is based on the belief that the Non-Bargaining Plan is a successor to the Draftsmen Plan within the meaning of subsection 82(1) of the Act. Thus the issue between the two parties relates to the interpretation of that subsection, which reads as follows:

Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan shall be deemed not to be wound up and the new pension plan shall be deemed to be a continuation of the original pension plan.

Otis maintains that subsection 82(1) was designed to cover the situation in which an employer establishes a new pension plan to be a successor to an existing plan. Obviously, as Otis points out, the Non-Bargaining Plan could not have been a new plan, nor could it have been established to be a successor, as it was in existence years before the draftsmen were transferred to it. So, according to Otis, subsection 82(1) cannot be a bar to the approval of the wind up report.

The Superintendent maintains that since the Non-Bargaining Plan takes the place of the Draftsmen Plan for the draftsmen, the Non-Bargaining Plan is a successor to the Draftsmen Plan. As a consequence, the Draftsmen Plan is deemed not to be wound up and no surplus can be withdrawn by Otis (subsections 80(10) and 82(1)).

The issue resolves itself into which of the two interpretations of subsection 82(1) is correct. Otis' argument is focused upon the following words of the subsection:

"Where a pension plan is established by an employer ..." (emphasis added)

The Superintendent's argument is focused upon the following words:

"Where a pension plan is established by an employer to be a successor to an existing pension plan ..." (emphasis added)

We are satisfied that, following the golden rule of statutory interpretation that words ought to be given their ordinary and grammatical meaning, the latter interpretation is the preferred one for the following reasons. First, under the latter interpretation, the words in the subsection are interpreted in the context of the whole subsection. The former interpretation fails to do this.

Second the word used in subsection 82(1) is "established", not "created". Had the legislature intended to capture only pension plans that were newly created, it could easily have said so. We are of the view that the intention underlying subsection 82(1) was to catch plans that are "established to be" successors to existing plans. This is reinforced by reference to the French version of subsection 81(21) which uses the words "...pour succéder". The Non-Bargaining Plan, in fact, was established as the successor of the Draftsmen Plan when all the active members of the Draftsmen Plan were transferred to it.

Third, the Canadian Law Dictionary defines "successor" as "... one who takes the place of another by succession". Here, the Non-Bargaining Plan "took the place of" the Draftsmen Plan "by succession".

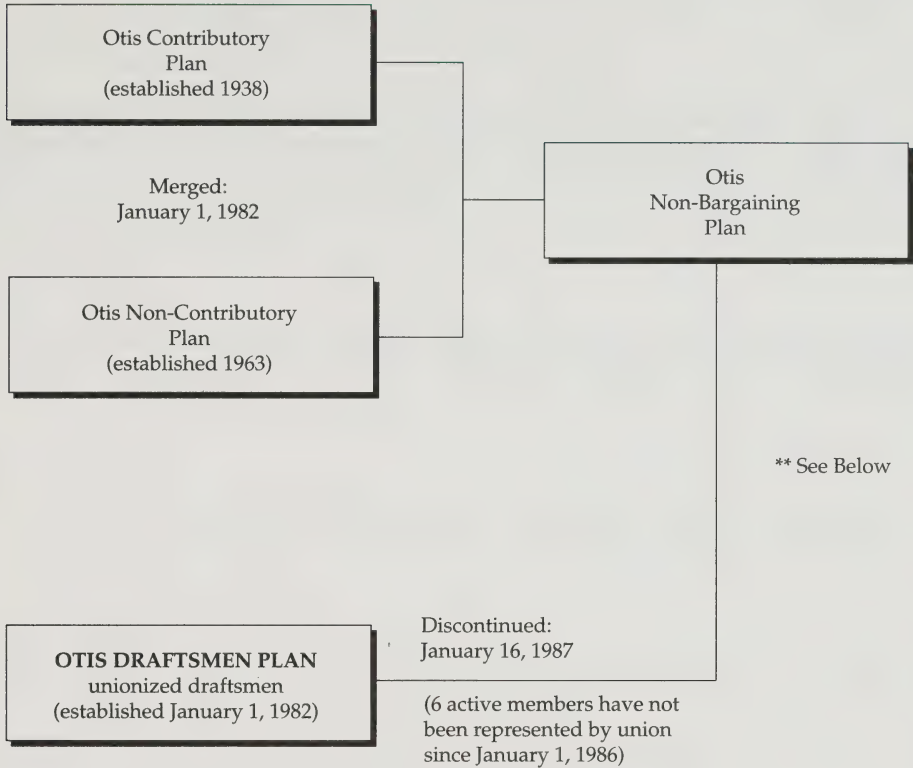
Looking beyond the words of the subsection itself, we are fortified in our view of subsection 82(1) because of the mischief it apparently was designed to prevent. One of the purposes of subsection 82(1) was to prevent the stripping of surpluses from pension plans. If Otis' view of the legislation were to prevail, an employer would be able to transfer its employees from one pension plan to another and then withdraw the surplus from the predecessor plan. Although we make no finding in this case that Otis was attempting to surplus strip, section 10 of the Interpretation Act directs the Commission to interpret the legislation so as to best ensure that its objects are attained.

In conclusion, the Non-Bargaining Plan is a successor to the Draftsmen Plan within the meaning of subsection 82(1) of the Act. The Superintendent is therefore directed to carry out the proposal to refuse the wind up report for the Draftsmen Plan.

"Mr. John Kruger", Chairman
"Ms. Eileen Gillese", Member
"Mr. J.M. St. Georges", Member
"Mr. D. Stouffer", Member
"Mr. G. Pattinson, Member

Toronto, Ontario
February 9, 1989

APPENDIX "C"
OTIS DRAFTSMEN



Assets to fund pensions for
40 members transferred from
Contributory and
Non-Contributory Plans

** Assets sufficient to fund the pensions for
6 remaining members for service accrued prior
to January 1, 1986 transferred to Non-
Bargaining Plan leaving a surplus of
\$1,191,939.00.

APPENDIX “D” THE APPEAL DECISION

Ontario Court (General Division), Divisional Court

JUDGMENT: Callaghan CJOC, Hartt and Montgomery JJ. released March 18, 1992.

The applicant implemented a pension plan for those of its employees who were members of the local union.

In 1986, due to reorganization of the applicant, the six active members of the plan were transferred to the Oakville office. Because the local was certified only with respect to the Hamilton location, it no longer represented the six transferred employees. They became members of the non-bargaining group and members of a different plan. Thereafter, the applicant ceased making contributions to the plan. Assets sufficient to fund pensions for service accrued by the six active members were transferred to the second plan. Provisions for pensions of former plan members were made. After providing for liabilities, a surplus of approximately 1.2 million dollars existed in the plan.

The appellants submitted a wind-up report for the original plan for approval by the respondent. The respondent refused to approve the report. The appellant appealed to the Pension Commission of Ontario which found that the second plan was a successor to the original plan within the meaning of the legislation. As a result, it prohibited the wind-up of the original plan.

On appeal, **held**, the appeal should be allowed.

The Commission properly gave subsection 81(1) of the Pension Benefits Act, R.S.O. 1990, c.P.8, a purposive interpretation consistent with the scheme of the Act and therefore the Commission’s finding that the second plan was a successor to the first plan would stand.

Subsection 81(8) of the legislation deals with the situation where assets are transferred but both plans remain operative. It does not exclude the operation of subsection 81(1) in circumstances where all the assets are transferred and the employer ceases to make contributions to the original plan. In the latter circumstances, subsection 81(1) applies. Although the second plan was the successor of the original plan, the effect of subsection 81(1) was not to preclude the approval of the wind-up report. That provision was not relevant to the issue of winding-up. Subsection 81(1) contemplates that a predecessor plan can be wound up, but that as a legal fiction be deemed to continue to exist and thus provide protection to the members of the former plan. Even though wound up, such a plan for all purposes would be treated as a continuing plan. Where the circumstances are such that a wind-up of a plan is appropriate, approval should be granted and subsection 81(1) is not relevant to that issue.

As the second plan was correctly found to be a successor to the original plan, the original plan was deemed not to be wound up and was to be considered to be a continuing plan for the purpose of the legislation.

Statutes Referred to

Pension Benefits Act, R.S.O. 1990, c. P.8, sections 70(5), 78, 79, 80, 81(1), (8), 91

Rules and Regulations Referred to

O.Reg. 708/87, Pension Benefits Act, 1987, clause 7a(2)(c)[enacted O. Reg. 100/88, s.1]

APPEAL from an order of the Pension Commission of Ontario refusing to approve a wind-up report.

John A. Campion and Diana W. Dimmer, for appellant.

Kim Twohig, for respondents.

BY THE COURT:-- This is an appeal brought pursuant to section 91 of the Pension Benefits Act, R.S.O. 1990, c. P.8, by Otis Canada Inc. from an order of the Pension Commission of Ontario dated February 8, 1989. By that decision the Commission confirmed the refusal of the Superintendent of Pensions for Ontario to approve the wind-up report for a certain pension plan established by Otis for Draftsmen, Local 164 (the "Draftsmen Plan").

The Superintendent's authority to refuse approval of a wind-up report is contained in subsection 70(5) of the Act:

70(5) The Superintendent may refuse to approve a wind up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members and former members of the pension plan.

Specifically the Superintendent refused to approve the wind-up report on the strength of subsection 81(1) of the Act which provides:

81(1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan shall be deemed not to be wound up and the new pension plan shall be deemed to be a continuation of the original pension plan.

The appellant appealed the decision of the Superintendent to the Commission. The Commission found that the Otis Pension Plan for non-bargaining employees (the "Non-Bargaining Plan") was a "successor" to the Draftsmen Plan within the meaning of subsection 81(1). Having so found, they went on to hold that the section was relevant to, and actually prohibits the winding-up.

The appellant seeks an order setting aside the decision of the Commission and directing the Superintendent to approve the wind-up report submitted by Otis.

The Facts

As the facts are not in dispute, a summary statement will suffice.

On January 1, 1982, as a result of the merger of the existing contributory and non-contributory plans, the Non-Bargaining Plan was formed. On the same date the draftsmen at the Otis Hamilton plant, who had previously been members of both the contributory and non-contributory Plans, became unionized and as a result Otis implemented the Draftsmen Plan for those employees who were members of the Draftsmen, Local 164.

On January 1, 1986, due to a reorganization of Otis, the then six active members of the Draftsmen Plan were transferred to the Oakville office. Because the Draftsmen, Local 164, was certified only in respect of the Otis Hamilton location, it no longer represented the six transferred employees. They chose to become members of the non-bargaining group and became members of the Non-Bargaining Plan effective January 1, 1986. Shortly thereafter, Otis ceased making contributions to the Draftsmen Plan.

Assets sufficient to fund pensions for service accrued prior to January 1, 1986, for the six draftsmen were transferred to the Otis Non-Bargaining Plan and fund. Liability for pensions for all former members of the Draftsmen Plan other than the six active members remained with the Draftsmen Plan. Annuities were purchased to cover the pension liabilities for the former members of the Draftsmen Plan. The actuary found a surplus of approximately \$1,191,929.00.

Return of the Surplus Funds

The Draftsmen Plan, as amended, contains the following clause which appears to contemplate the removal of surplus from the pension plan:

In the case of termination of the Plan or in the event of discontinuance of contributions having the effect of such termination, the Plan's Fund shall be used for the exclusive benefit of Members or their beneficiaries..., except that any part of the Fund not required to satisfy all liabilities of the Plan for benefits shall, with the approval of the Pension Commission of Ontario, be returned to the Company.

It is not clear whether this clause is applicable in the case of a continuing pension plan, the significance of which will be explained below. But the determination of this issue is something that must be left to the Commission.

Although the matter of the return of surplus funds to the employer is not directly in issue in this appeal, approval of the wind-up report is seen by the appellant as a necessary pre-condition to obtaining the consent of the Commission under sections 78-79 of the Act for a surplus withdrawal pursuant to clause 7a(2)(c) of O. Reg. 708/87.

Point in Issue

The issue in this appeal concerns the applicability of section 81(1) and whether the Commission, relying on section 81(1), was correct in refusing to approve the wind-up report for the Draftsmen Plan.

Position of the Appellant

Counsel for the appellant argues that the Commission erred in its interpretation of subsection 81(1) and that properly interpreted, subsection 81(1) has no application and cannot provide a basis for the Superintendent's refusal to approve the wind-up report. As the company had obtained the necessary consent to transfer assets from one plan to the other, the Commission erred in dealing with the matter in the context of protecting the surplus when in fact what was being dealt with was a simple request to wind up the Draftsmen Plan. According to counsel for the appellant, the inapplicability of subsection 81(1) is apparent from the plain wording interpreted in the light of the scheme of the Act as a whole and in particular the collective effect of sections 80-81 which deal with new plans. The words used, taken in their grammatical and ordinary sense, require that the successor plan be established by the employer after the establishment of the original plan and that there be an intention to establish the Non-Bargaining plan to be a successor to the Draftsmen Plan.

Position of Respondent

Counsel for the respondent supports the reasoning and conclusion of the Commission that subsection 81(1) prevents the wind-up of the Draftsmen Plan. She submits that one of the primary purposes of the Act is to ensure that pension plans are administered so that the assets are preserved and the section must be interpreted in that light. The intention of the employer is irrelevant; intent to strip surplus is not in issue. If a particular plan is not wound up then surplus may be removed only under very stringent conditions. Where the employer replaces one pension plan with a different plan, the replacement plan is a new plan and a "successor" whether or not it was in existence prior to the plan which it replaces.

Judgment

Despite the very able and seductive argument of counsel for the appellant, we are of the view that the Board correctly gave to subsection 81(1) a purposive interpretation consistent with the scheme of the Act. Accordingly, the Commission's finding that the Non-Bargaining Plan was a "successor" to the Draftsmen Plan will stand.

The appellant's argument that c. 81(8) having been complied with meant that subsection 81(1) had no application caused us considerable concern. It is our opinion that subsection 81(8) deals with the situation where assets are transferred but both plans remain operative. It does not exclude the operation of subsection 81(1) in circumstances where all the assets are transferred and the employer ceases to make contributions to the original plan. In those latter circumstances, subsection 81(1) applies.

In our view, however, even though the Commission correctly characterized the Non-Bargaining Plan as a successor to the Draftsmen Plan the effect of the applicability of subsection 81(1) is not to preclude the approval of the wind up report. This provision is not relevant per se to the issue of winding up. Subsection 81(1) contemplates that a 'predecessor' plan can be wound up in fact, but as a legal fiction be deemed to continue to exist, thus providing further protection to the members of the former plan. Even though wound up, it is for all purposes to be treated as a continuing plan. In other words, where the circumstances are such that a winding up of the Plan is appropriate under the relevant provisions of the Act then the approval to the winding-up should be granted. Subsection 81(1) is not relevant to that issue.

In the present case, since the Non-Bargaining Plan was correctly found to be a successor to the Draftsmen Plan, the Draftsmen Plan is deemed not to be wound up, that is, it should be considered to be a continuing plan for the purposes of the Act. In order to gain the Commission's consent to release the surplus the terms and conditions set out in section 79 must be applied by the Commission.

Appeal allowed and the matter returned to the Commission to be dealt with in a manner consistent with these reasons.

The order of the Divisional Court states:

- (1) **THIS COURT ORDERS THAT** the Pension Commission's finding that the Otis Pension Plan for Non-Bargaining Employees was a "successor" to the Draftsmen Plan pursuant to s. 81(1) of the New Act is upheld and;
- (2) **THIS COURT ORDERS THAT** the appeal be allowed and the matter be returned to the Pension Commission. In order to gain the Pension Commission's consent to release the surplus, the terms and conditions set out in section 79 of the New Act must be applied by the Pension Commission.



INDEX NO.: XDEC-27

PLAN: Pension Plan for the Vending and Food Service Bargaining Unit Employees in Windsor and Area, Canteen of Canada Limited, Registration No. 12596

DATE OF DECISION: January 26, 1995

KNOWN AS: Can Can Food and Vending Services Ltd.

PUBLISHED: Bulletin 5/4 (Winter 1995)

IN THE MATTER OF an application by Can Can Food and Vending Services Ltd. to the Pension Commission of Ontario with respect to the withdrawal of surplus from the Pension Plan for the Vending and Food Service Bargaining Unit Employees in Windsor and Area, Canteen of Canada Limited, Registration No. 12596.

BEFORE: Eileen E. Gillese, Chair
Monica Townson, Vice Chair
Darcie Beggs, Member
Kit Moore, Member
Joyce Stephenson, Member

APPEARANCES: On behalf of the Applicant:
Diana M. Woodhead
Ian McLeod
Thomas Karoly

On behalf of the Superintendent:
Andrea Rowe
Paul A. Dempsey

HEARING DATES: November 17, 1994 and December 1, 1994
Toronto, Ontario

REASONS FOR DECISION

Nature of the Application

Can Can Food and Vending Services Ltd., a subsidiary of Restauronics Services Inc. ("Can Can"), applied to the Pension Commission of Ontario (the "Commission") for its consent to payment to it of 34.5% of the net surplus in the Pension Plan for the Vending and Food Service Bargaining Unit Employees in Windsor and Area, Canteen of Canada Limited, Registration No. C-12596 (the "Plan"). In effect, Can Can sought the Commission's consent to payment to it of surplus Plan funds in the amount of \$261,350.26 as at March 31, 1994, plus investment earnings thereon, to the date of payment less a proportionate share of the expenses associated with the wind up and surplus application.

The application was brought pursuant to subsections 78(1) and 79(3) of the Pension Benefits Act, R.S.O. 1990 (the "Act"), to clause 8(1)(b) of Reg. 909, R.R.O. 1990 and to a surplus sharing agreement between Can Can and the Retail, Wholesale Canada, Canadian Service Sector of U.S.W.A. (the "Union") under the terms of which 65.5% of the net surplus was to be distributed to the members, former members and other persons entitled to benefits as of the effective date of the wind up.

The Union supported Can Can's application.

Result

In a letter dated December 2, 1994, the Commission gave Can Can its consent to the application and advised that reasons would follow. The consent was not to be effective until the administrator satisfied the Commission that all benefits, benefit enhancements including benefit enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members, and any other persons were entitled had been paid, purchased or otherwise provided for to the satisfaction of the Commission.

The reasons for the Commission's decision follow.

The Issue

The issue which the Commission had to resolve was: what legislative provisions govern the application? Those that apply to surplus withdrawal from a continuing plan or those that apply to a wound up plan? The criteria contained in subsection 79(1) of the Act govern the withdrawal of surplus from on going pension plans whereas the criteria contained in subsection 79(3) apply to wound up pension plans.

The issue arose because Plan members ceased to accrue benefits in the Plan effective October 31, 1991 and began participating in the Retail, Wholesale and Department Store Union Pension Plan (the "MEPP") effective November 1, 1991 and Can Can is a participating employer in the MEPP.

Subsection 81(1) of the Act deems that where a pension plan is established, by an employer, to be a successor to an existing plan, the original plan is deemed not to be wound up. Thus, if subsection 81(1) applies, the MEPP would be a successor plan, the Plan would be deemed to be a continuing plan and to access surplus, Can Can would have to follow the withdrawal rules which relate to on going plans (i.e. subsection 79(1) procedures). If subsection 81(1) does not apply, then the appropriate procedures for Can Can to follow in making its application are those contained in subsection 79(3), the rules for withdrawal from wound up pension plans.

The Relevant Legislation

The wording of subsection 81(1) is critical to the resolution of this issue so is set out now.

81.--(1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan shall be deemed not to be wound up and the new pension plan shall be deemed to be a continuation of the original pension plan. (emphasis added)

The Facts

The Plan was established effective January 1, 1973, as a contributory defined benefit plan. As a result of a collective agreement entered into between the Union and Can Can, members of the Plan ceased to participate in the Plan after October 31, 1991, and began participation in the MEPP effective November 1, 1991. As a participating employer, Can Can's sole responsibility is to make contributions to the MEPP on a cents per hour basis pursuant to the provisions of the collective agreement. Contributions made by, on or behalf of individual members to the MEPP are accumulated in separate accounts and maintained for each member. All benefits under the MEPP are determined by reference to the contributions accumulated for each member.

The MEPP was established by the Retail, Wholesale and Department Store Union and is administered by a board of trustees, all of whom are officers of the union.

In December of 1993, Can Can and the Union entered into a further collective agreement under the terms of which it was agreed that the surplus in the Plan would be shared with 65.5% of the surplus to be transferred to the MEPP for the benefit of the members, deferred vested members, inactive members and pensioners and the remaining 34.5% of the surplus to go to Can Can, as the employer.

The Union had the benefit of legal counsel in negotiating the surplus sharing agreement and the membership ratified the arrangement.

On October 14, 1994, the Superintendent of Pensions approved the wind-up report and the payment of basic benefits pursuant to the wind-up report.

Does Subsection 81(1) of the Act Apply?

In order for subsection 81(1) to apply, the MEPP must have been “established by an employer [Can Can] to be a successor to an existing pension plan”. We find that the MEPP was not “established” by Can Can nor was it “established to be a successor” by Can Can. The MEPP was established by the Union and the fact that Can Can is a participating employer does not lead to the conclusion that Can Can, in fact, established the MEPP. We understand that Can Can’s agreement was necessary for members to join the MEPP. We accept that, in fact, the MEPP is a successor in the sense that it took the place of the Plan. But, on a plain reading of subsection 81(1), for a pension plan to be a successor plan, the plan must have been established by an employer to be a successor. The MEPP was not established by Can Can so it could not have been established by Can Can to be a successor.

Counsel for the Superintendent invited us to find that the decision of this Commission, dated February 9, 1989, in Otis Canada, Inc. v. Ontario (Superintendent of Pensions), *PCO Bulletin*, Volume 1, Issue 1, p. 16 dealt with the same issue, albeit in a different context, and ought to be followed. However, in our view, the Otis case is clearly distinguishable from the case before us. In Otis, both of the two pension plans in issue, the Non-bargaining Plan and the Draftsmen Plan, were established by the employer as plan sponsor. The question we decided in Otis was whether creation of the second plan (the Non-bargaining Plan) had to take place after creation of the original plan (the Draftsmen Plan) in order for the second plan to be a successor plan. The Commission found, in the Otis case, that the second plan did not have to be created after the original plan in order to be considered to be a successor; it was enough that the second plan was in fact a successor to the first plan. This aspect of the Commission’s decision was specifically approved by Divisional Court in Re Otis Canada, Inc. and Ontario (Superintendent of Pensions), (1992), 89 D.L.R. (4th) 746.

In the case before us, however, we would have to read subsection 81(1) as if it did not contain the words “established by an employer” in order to find that it applied. We would have to be satisfied that subsection 81(1) was intended to apply whenever a pension plan amounted to a successor plan to an existing plan, regardless of who established the second plan. The MEPP may be a successor pension plan but subsection 81(1) does not apply to every successor plan but, rather, to those pension plans established by an employer to be successor plans. As we have stated, we do not find that to be an interpretation of which subsection 81(1) is capable. We believe that such an interpretation would do violence to a plain reading of subsection 81(1).

There is no need to go beyond the plain meaning of the legislation so we need not adopt a purposive approach to interpreting the words of subsection 81(1). We would note, however, that part of the mischief subsection 81(1) was designed to prevent was surplus stripping. In the case before us, no possibility of surplus stripping exists as the arrangement was negotiated by the Union with the benefit of legal counsel and the surplus to go to the benefit of the Plan beneficiaries far exceeds the amount of surplus that would have to be left in the plan on an ongoing basis pursuant to subsection 79(1).

If the Commission were inclined to take a purposive approach, it would be influenced by the fact that there was no obligation on Can Can -- or any other employer -- to provide any pension plan whatsoever for its employees. Can Can could have wound up the Plan and made no pension provision for its employees or arranged for the participation of its employees in a group RRSP. If a purposive approach led to the application of subsection 81(1), it would have the effect of discouraging employers from enabling their employees to participate in a MEPP. It would encourage employers to wind up and make no alternate pension provision for its employees. This does not seem useful particularly in light of the provisions of the Act which specifically call upon the Commission to promote pension plan coverage (section 96).

CONCLUSION

For these reasons, we held that subsection 81(1) does not apply and Can Can was entitled to make its application pursuant to the provisions of subsection 79(3) of the Act. Thus, the Commission consented to the withdrawal of surplus by Can Can subject to Can Can satisfying the Commission that all benefits, benefit enhancements including benefit enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members, and any other persons were entitled had been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Dated this 26th day of January 1995 at the City of
Toronto, Province of Ontario.

Eileen E. Gillese, Chair
Monica Townson, Vice Chair
Darcie Beggs
Kit Moore
Joyce Stephenson

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Mailing List Update	Linda Stangl	314-0694
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PBGF Assessment	George Ha	314-0676
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* Written FOIPOP requests should be mailed to Ron Ward, Assistant Co-ordinator, Information and Privacy Office, Ministry of Finance, 30th floor, 250 Yonge Street, Toronto ON M5B 2N7. Phone (416) 325-8369 or Fax: (416) 327-0941.

Contacts for Plan-related Enquiries

1. Sector Allocations - (At least one plan with 250 or more members)

Sectors	Pension Officer		Alternate	
Agriculture, Mining Construction, Finance	Rosemine Jiwa-Jutha	314-0611	Mark Eagles	314-0599
Trade, Commercial, Public Administration	Mark Eagles	314-0599	Rosemine Jiwa-Jutha	314-0611
Food, Beverages, Textiles, Paper	Jaan Pringi	314-0586	Larry Martello	314-0587
Rubber, Plastics, Transportation Equipment	Larry Martello	314-0587	Elizabeth Addo	314-0607
Printing, Primary Metals, Machinery	Alain Malaket (bilingual)	314-0609	John Graham	314-0647
Electrical, Non-Metallic, Chemicals	John Graham	314-0647	Alain Malaket	314-0609

2. Alpha Allocations - Defined Benefit & Multi-Employer Plans (Plans with less than 250 members)

Alpha Range	Pension Officer		Alternate	
A-BRI	David Allan	314-0612	Elizabeth Carter	314-0604
BRO-COM	Steve Young (bilingual)	314-0646	Mark Henry	314-0584
CON-EZZ	Elizabeth Addo	314-0607	William Qualtrough	314-0641
F-HAZ	Mark Henry	314-0584	Steve Young	314-0646
HEA-KMZ	William Qualtrough	314-0641	Sandy Malloy	314-0636
KNA-MOQ	Elizabeth Carter	314-0604	David Allan	314-0612
MOR-PNZ	Stanley Chan	314-0635	Maureen Barber	314-0645
POL-SHE	Maureen Barber	314-0645	Stanley Chan	314-0635
SHI-TORO	Sandy Malloy	314-0636	William Qualtrough	314-0641
TORR -#*	William Qualtrough	314-0641	Elizabeth Addo	314-0607

*Companies with alpha-numeric names.

3. Alpha Allocations - Defined Contribution Plans

Alpha Range	Pension Analyst		Alternate	
A-BAU	Gino Marandola (bilingual)	314-0698	John Staric	314-0596
BAV-CANADA	Marion Gassenauer	314-0690	Amin Purshottam	314-0552
CANADI-COK	Margaret Fennell	314-0600	Claude De Souza	314-0608
COL-DIL	Claude De Souza	314-0608	Margaret Fennell	314-0600
DIM-FLO	Amin Purshottam	314-0552	Marion Gassenauer	314-0690
FLU-HAL	Margaret Fennell	314-0600	Claude De Souza	314-0608
HAM-JAL	Merle Corbie	314-0637	Lynn Barron	314-0639
JAM-MIL	Debra Bain	314-0640	John Staric	314-0596
MIN-ONT	Claude De Souza	314-0608	Margaret Fennell	314-0600
ONU-RAL	Lynn Barron	314-0639	Merle Corbie	314-0637
RAM-SHA	John Staric	314-0596	Debra Bain	314-0640
SHE-THA	Merle Corbie	314-0637	Lynn Barron	314-0639
THE-VUL	Lynn Barron	314-0639	Merle Corbie	314-0637
VUM -#*	John Staric	314-0596	Debra Bain	314-0640
As Designated	Placido Mineque	314-0670		

*Companies with alpha-numeric names.

4. Alpha Allocations - Pension Plans of Insolvent Companies

Alpha Range	Co-ordinator	
A-E, T-#s*	Jai Persaud	314-0595
F-S	Larry Falconer	314-0610

*Companies with alpha-numeric names.

Conversion to Revenue Canada's 7 Digit Registration Number

Attention: All Administrators and Consultants

The PCO recently sent letters to all Ontario-registered pension plans requesting that administrators confirm the Revenue Canada registration number which corresponds to the provincial registration number (please see the announcement on page 6 of this issue.)

Many years ago, Revenue Canada moved from a 6 digit to a 7 digit registration number and some are indicating the old 6 digit number in error.

Please confirm or report mismatches and reference only the 7 digit number.

Please forward undeliverable copies to:

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Toronto, Ontario
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THE PENSION COMMISSION OF ONTARIO

BULLETIN

CA20N
TR600
-B74

Spring 1995

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The PCO Bulletin is published by the Pension Commission of Ontario, which is located at 250 Yonge Street, (just south of Dundas Street), 29th Floor, Toronto, Ontario M5B 2N7 (416) 314-0660 fax (416) 314-0650

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* * *

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The Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 (as amended), the terms of the pension plan and the policy and practices of the PCO should be considered in determining specific legislative and other legal requirements and professional advice should be sought.

ISSN 1180-1565

Explanatory Notes to O. Reg. 73/95

In brief, Regulation 909 was amended on February 23, 1995 to:

- (1) resolve a conflict between the *Pension Benefits Act* and the *Income Tax Act* (Canada) regarding the funding of designated plans and exempt designated plans from PBGF protection and the requirement to pay PBGF levies;
- (2) remedy an inconsistency concerning the dates upon which late filing fees for annual information returns (AIRs) are effective;
- (3) stipulate a Pension Benefits Guarantee Fund (PBGF) assessment certificate for use by pension plans with fiscal year end dates that occur on or after March 31, 1995. The certificate will take effect upon the approval of the Minister of Finance;
- (4) exempt certain municipal plans and the OPSEU plan from coverage by the PBGF, filing of a PBGF assessment certificate and payment of a PBGF assessment;
- (5) remove the requirement that plan administrators file a confirmation with the Superintendent of Pensions that the Statement of Investment Policies and Goals (SIP&G) has been reviewed and no change has been made;
- (6) stipulate that three prescribed forms now in use will not be in effect after the following dates:
 - Application for Registration of a Pension Plan (Form 1) - July 1, 1995
 - Application for Registration of a Plan Amendment (Form 1.1) - July 1, 1995
 - Annual Information Return for pension plans with fiscal year end dates occurring on and after March 31, 1995

These forms will be replaced by others approved by the Minister of Finance.

(1) Resolution of Designated Plan Funding Conflict

Designated pension plans, as defined under the Regulations pursuant to the *Income Tax Act* (Canada) ("ITA"), provide benefits to significant shareholders, persons who do not operate at arm's length from the

employer, and highly paid persons. Most designated plans are unable to comply with the PBA funding rules due to the funding rules under the ITA which limit the eligible contributions to such plans.

- (a) The regulations have been amended in order to exempt designated plans from the PBA funding requirements but only to the extent that contributions exceed the maximum funding rules under the ITA. New reporting requirements are established.

Subsection 1(1)

New definitions for "designated plan", "eligible contribution" and "maximum funding valuation" have been added.

New subsection 4(2.1)

Exempts designated plans from the funding requirements of subsection 4(2) with respect to contributions that are not eligible contributions.

New subsection 13(1.2)

Establishes a new reporting requirement. The initial valuation report for a designated plan must contain a maximum funding valuation as required under the ITA for designated plans, in addition to all other PBA and professional standards requirements.

Section 14

Exempts designated plans from the requirement to file annual reports where there is a solvency concern.

New subsection 14(9.1)

Establishes the requirement to file a triennial report which contains a maximum funding valuation.

New subsection 14.1

Establishes a new reporting requirement for pension plans that are designated plans on February 23, 1995. A copy of the most recent valuation filed with the Minister of National Revenue which contains a maximum funding valuation must be filed no later than July 1, 1995, if the last filed report does not already contain such a valuation.

- (b) The amendment provides for circumstances where a designated plan ceases to be a designated plan.

New subsection 14(6.1)

Establishes a requirement to file a report prepared and certified by an actuary with a valuation date no later than the end of the fiscal year of the plan in which the plan ceases to be a designated plan.

If a plan ceases to be a designated plan, the effective date of the change would normally be December 31. A new actuarial valuation must be performed effective the same December 31 (if the plan's fiscal year is a calendar year) or the first plan fiscal year-end after the December 31 in which the plan no longer qualifies as a designated plan.

- (c) Exemptions from the PBGF.

Subsections 18(6), 37(1), and 47(2.1)

With respect to fiscal year ends that fall on or after March 31, 1995, designated plans will no longer be required to pay PBGF assessments. Coverage under the PBGF will cease to apply. The exemption from PBGF coverage will continue to apply for five years following the time a plan ceases to be a designated plan. However, PBGF assessments will be required to be paid and the PBGF assessment certificate must be completed beginning the first fiscal year that the plan is no longer designated.

Questions about the interpretation of the *Income Tax Act* (Canada) and, in particular, questions about the meaning of "eligible contribution" or "maximum funding valuation" should be referred to Revenue Canada.

- (2) **Inconsistency Concerning Late Filing Fees for AIRs**

Subsection 18(5)

Where AIR filing fees are received late, a filing fee increase to 120 per cent of the fee that would otherwise have been payable is applicable.

New subsection 18(5)(b)

For pension plans that provide defined benefits, the late filing fee becomes effective if the initial fee is not received within nine months after the end of the fiscal year of the plan. There is no change to the six month payment period for plans that provide only defined contribution benefits.

- (3) **A PBGF Assessment Certificate Effective March 31, 1995**

Subsections 18(6), (7) and 83(2.1)

These sections establish a requirement to file, as an attachment to the AIR, a Pension Benefits Guarantee Fund assessment certificate in the form approved by the Minister. The filing and assessment requirements apply to plans that provide defined benefits (designated plans, MEPPs and qualifying plans excepted) and are effective with respect to fiscal years ending on or after March 31, 1995.

Qualifying plans must comply with new ss. 18(8) and (9). Certification by the actuary and the plan administrator is required. There is no prescribed form or certificate required under these subsections.

- (4) **Exemptions for Municipal Plans and the OPSEU Plan**

Subsection 47(1)

Stipulates that certain municipal plans and the Ontario Public Service Employees Union Pension Plan (OPSEU) are not covered by the PBGF. These plans are exempted from the requirements of subsection 18(7) and sections 30 and 37. This subsection has been revised because some of the plans already listed no longer exist, the names have changed (the OPSEU plan was established for those members of the Public Service Pension Plan who are members of OPSEU), or some plans were inadvertently not included in past exemptions.

(5) No Requirement to File Confirmation Concerning SIP&G

Subsection 68(2)

This subsection is amended to eliminate the requirement for plan administrators to file a confirmation with the Superintendent that the Statement of Investment Policies and Goals ("SIP&G") has been reviewed and no change has occurred. Instead, on the new AIR form, the plan administrator will be asked to certify that a review of the SIP&G has been conducted.

(6) Replacement of Prescribed Forms

Subsection 83(1)

Provides for the revocation of Form 1 (Application for Registration of a Pension Plan) effective July 1, 1995. Form 1 will be replaced by another form to be approved by the Minister and provided by the Superintendent. The new form must be used for applications received on and after July 1, 1995.

Subsection 83(1.1)

Provides for the revocation of Form 1.1 (Application for Registration of a Plan Amendment) effective July 1, 1995. Form 1.1 will be replaced by another form to be approved by the Minister and provided by the Superintendent. The new form must be used for applications received on and after July 1, 1995.

Subsection 83(2)

Provides for the revocation of Form 2 (Annual Information Return) effective March 31, 1995. Form 2 will be replaced by another form to be approved by the Minister and provided by the Superintendent. The new form must be used for returns made for pension plans with fiscal year ending dates on or after March 31, 1995.

Availability of New Forms

All new prescribed forms will be published in a supplement to the spring issue of the *PCO Bulletin*. Form 1.0 and 1.1 are effective on and after July 1, 1995. They and Forms 3 and 4 may be reproduced for compliance purposes. Specimens of Form 2, the Annual Information Return, and the PBGF Assessment Certificate will be published in the supplement along with instructions for completing these forms.

Regulations

On February 23, 1995 O. Reg. 73/95 was filed, amending Regulation 909/90. The authoritative version in English and French was published in the March 11, 1995 issue of the Ontario Gazette.

REGULATION TO AMEND REGULATION 909 OF THE REVISED REGULATIONS OF ONTARIO, 1990 MADE UNDER THE PENSION BENEFITS ACT

Note: Since January 1, 1994, Regulation 909 has been amended by Ontario Regulations 142/94, 408/94, 409/94, 558/94 and 665/94. For prior amendments, see the Table of Regulations in the Statutes of Ontario, 1993.

1. Subsection 1 (1) of Regulation 909 of the Revised Regulations of Ontario, 1990 is amended by adding the following definitions:

"designated plan" means a pension plan that is a designated plan for the purposes of the *Income Tax Act* (Canada); ("régime désigné")

"eligible contribution" means a payment made by an employer to a pension fund or an insurance company, as applicable, in respect of a pension plan, that qualifies as an eligible contribution for the purposes of the *Income Tax Act* (Canada); ("cotisation admissible")

"maximum funding valuation" means a maximum funding valuation for the purposes of the *Income Tax Act* (Canada); ("évaluation du financement maximal")

2. (1) Subsection 4 (2) of the Regulation is amended by striking out the portion before clause (a) and substituting the following:

(2) Subject to subsection (2.1), an employer required to make contributions under a pension plan or a person required to make contributions under a pension plan on behalf of an employer shall make payments to the pension fund or to an insurance company, as applicable, of amounts that are not less than the sum of,

• • • • •

(2) Section 4 of the Regulation is amended by adding the following subsection:

- (2.1) Despite subsection (2), an employer required to make contributions under a designated plan shall not be required to make a payment to the pension fund or to an insurance company, as applicable, that is not an eligible contribution.

3. Section 13 of the Regulation is amended by adding the following subsection:

- (1.2) The report for a designated plan shall also contain a maximum funding valuation.

4. (1) Subsection 14 (1) of the Regulation is amended by striking out "Subject to subsections (2) to (6)" in the first line and substituting "Subject to subsections (2) to (6.1)".

(2) Section 14 of the Regulation is amended by adding the following subsections:

- (4.1) Subsections (2) and (3) do not apply to a pension plan that is a designated plan.

• • • • •

- (6.1) Where a pension plan ceases to be a designated plan, the administrator of the plan shall cause the plan to be reviewed and a report prepared and certified by an actuary with a valuation date no later than the end of the fiscal year of the plan in which the plan ceased to be a designated plan.

• • • • •

- (9.1) Each report under this section for a designated plan shall contain a maximum funding valuation.

5. The Regulation is amended by adding the following section:

- 14.1** The administrator of a pension plan that is a designated plan on February 23, 1995 shall, no later than July 1, 1995, file a copy of the most recent report containing a maximum funding valuation filed with the Minister of National Revenue for the plan.

6. Subsections 18 (5) and (6) of the Regulation are revoked and the following substituted:

- (5) The filing fee for an annual information return is 120 per cent of the fee otherwise calculated under this section if the return is delivered to the Superintendent,

- (a) more than six months after the end of the fiscal year of the plan, in the case of a plan that provides only defined contribution benefits; or

- (b) more than nine months after the end of the fiscal year of the plan, in the case of any other plan.

- (6) Subsection (7) applies to a pension plan providing defined benefits, other than a plan described in subsection 6 (1), a designated plan or a plan for which an election under subsection 5.1 (1) or (2) is in effect on the assessment date, if the fiscal year end of the plan falls on or after March 31, 1995.

- (7) The administrator of a pension plan to which this subsection applies shall file, as an attachment to the annual information return, a Pension Benefits Guarantee Fund assessment certificate.

- (8) The administrator of a pension plan providing defined benefits for which an election under subsection 5.1 (1) or (2) is in effect on the assessment date, other than a plan described in subsection 6 (1), shall file, as an attachment to the annual information return, a qualifying plan Guarantee Fund certificate stating,

- (a) the PBGF liabilities of the plan;

- (b) the PBGF assessment base for the plan; and

- (c) a calculation of the amount of the assessment under subsection 37 (6).

- (9) An actuary shall certify the accuracy of the information required in clauses (8) (a) and (b) and the plan administrator shall certify the accuracy of the information required in clause (8) (c) and of all other information provided in the qualifying plan Guarantee Fund certificate.

7. Subsection 37 (1) of the Regulation is amended by inserting “a designated plan or” after “other than” in the second line.

8. (1) Subsection 47 (1) of the Regulation is revoked and the following substituted:

(1) Pension benefits provided by the following pension plans are not guaranteed by the Guarantee Fund and are exempted from subsection 18 (7) and sections 30 and 37:

1. The Improved Retirement Plan for the Employees of the Corporation of the City of Chatham.

2. The City of Etobicoke Pension Plan.

3. The Town of Gananoque Employees Pension Plan.

4. The Corporation of the City of Hamilton Municipal Retirement Fund.

5. The Hamilton-Wentworth Retirement Fund.

6. The Corporation of the City of Kitchener Pension Plan for Fire Department Employees.

7. The Pension Plan for Employees of the Corporation of the Township of Lochiel.

8. The Corporation of the City of North Bay Employees' Pension Plan.

9. The Ontario Municipal Employees Retirement System.

10. The Ontario Public Service Employees' Union Pension Plan.

11. The Corporation of the City of Oshawa Employees' Pension Plan.

12. The City of Ottawa Superannuation Fund.

13. The Corporation of the Town of Tillsonburg Employees Pension Plan.

14. The Municipality of Metropolitan Toronto and Participating Employers Plan.

15. The Municipality of Metropolitan Toronto Police Benefit Fund.

16. The Toronto Civic Employees Pension and Benefit Fund.

17. The Toronto Fire Department Superannuation and Benefit Fund.

18. The Corporation of the City of York Employee Pension Plan.

(2) Section 47 of the Regulation is amended by adding the following subsection:

(2.1) The following are prescribed classes of pension plans for the purposes of paragraph 6 of section 85 of the Act:

1. Designated plans.

2. Pension plans for a period of five years following the time at which they cease to be designated plans.

9. Subsection 68 (2) of the Regulation is revoked and the following substituted:

(2) All amendments to the statement of investment policies and goals shall be filed within 90 days of the adoption of the amendment.

10. Subsections 83 (1), (1.1) and (2) of the Regulation are revoked and the following substituted:

(1) An application for registration of a pension plan,

(a) shall be in Form 1, if made to the Superintendent before July 1, 1995; or

(b) shall be in a form approved by the Minister and provided by the Superintendent, if made to the Superintendent on or after July 1, 1995.

(1.1) An application for registration of an amendment to a pension plan,

- (a) shall be in Form 1.1, if made to the Superintendent before July 1, 1995; or
 - (b) shall be in a form approved by the Minister and provided by the Superintendent, if made to the Superintendent on or after July 1, 1995.
- (2) An annual information return referred to in subsection 20 (1) of the Act,
- (a) shall be in Form 2, if the fiscal year of the plan in respect of which the return is made ends before March 31, 1995; or
 - (b) shall be in a form approved by the Minister and provided by the Superintendent, if the fiscal year of the plan in respect of which the return is made ends on or after March 31, 1995.
- (2.1) A Pension Benefits Guarantee Fund assessment certificate referred to in subsection 18 (7) shall be in a form approved by the Minister and provided by the Superintendent.

RÈGLEMENT MODIFIANT LE RÈGLEMENT 909
DES RÈGLEMENTS REFONDUS
DE L'ONTARIO DE 1990
PRIS EN APPLICATION DE LA
LOI SUR LES RÉGIMES DE RETRAITE

Remarque : Depuis le 1^{er} janvier 1994, le Règlement 909 a été modifié par les Règlements de l'Ontario 142/94, 408/94, 409/94, 558/94 et 665/94. Pour les modifications antérieures, voir la Table des règlements qui figure dans les Lois de l'Ontario de 1993.

1. Le paragraphe 1 (1) du Règlement 909 des Règlements refondus de l'Ontario de 1990 est modifié par adjonction des définitions suivantes:

«cotisation admissible» Paiement que fait un employeur à une caisse de retraite ou à une compagnie d'assurance, selon le cas, à l'égard d'un régime et qui constitue une cotisation admissible pour l'application de la *Loi de l'impôt sur le revenu* (Canada). («eligible contribution»)

«évaluation du financement maximal» S'entend d'une évaluation du financement maximal pour l'application de la *Loi de l'impôt sur le revenu* (Canada). («maximum funding valuation»)
«régime désigné» Régime de retraite qui est désigné pour l'application de la *Loi de l'impôt sur le revenu* (Canada). («designated plan»)

2. (1) Le paragraphe 4 (2) du Règlement est modifié par substitution, au passage qui précède l'alinéa a), de ce qui suit:

(2) Sous réserve du paragraphe (2.1), l'employeur qui est tenu de cotiser à un régime ou la personne qui est tenue de le faire pour le compte de celui-ci fait à la caisse de retraite ou à la compagnie d'assurance, selon le cas, des paiements dont le montant n'est pas inférieur à la somme des éléments suivants:

(2) L'article 4 du Règlement est modifié par adjonction du paragraphe suivant:

• • • • •

(2.1) Malgré le paragraphe (2), l'employeur qui est tenu de cotiser à un régime désigné n'est pas tenu de faire un paiement qui n'est pas une cotisation admissible à la caisse de retraite ou à une compagnie d'assurance, selon le cas.

3. L'article 13 du Règlement est modifié par adjonction du paragraphe suivant:

(1.2) Le rapport portant sur un régime désigné contient également une évaluation du financement maximal.

4. (1) Le paragraphe 14 (1) du Règlement est modifié par substitution, à «Sous réserve des paragraphes (2) à (6)» à la première ligne, de «Sous réserve des paragraphes (2) à (6.1)».

(2) L'article 14 du Règlement est modifié par adjonction des paragraphes suivants:

(4.1) Les paragraphes (2) et (3) ne s'appliquent pas au régime qui est un régime désigné.

• • • • •



- (6.1) Lorsqu'un régime cesse d'être un régime désigné, l'administrateur du régime fait réviser le régime et préparer et certifier par un actuaire un rapport dont la date d'évaluation n'est pas postérieure à la fin de l'exercice pendant lequel le régime cesse d'être un régime désigné.

•••••

- (9.1) Le rapport préparé aux termes du présent article à l'égard d'un régime désigné contient une évaluation du financement maximal.

5. Le Règlement est modifié par adjonction de l'article suivant:

- 14.1** L'administrateur d'un régime qui est un régime désigné le 23 février 1995 dépose, au plus tard le 1^{er} juillet 1995, une copie du rapport le plus récent contenant une évaluation du financement maximal qui a été déposé auprès du ministre du Revenu national à l'égard du régime.

6. Les paragraphes 18 (5) et (6) du Règlement sont abrogés et remplacés par ce qui suit:

- (5) Les droits de dépôt de la déclaration annuelle sont de 120 pour cent des droits calculés par ailleurs aux termes du présent article si la déclaration est remise au surintendant:

- a) plus de six mois après la fin de l'exercice du régime, dans le cas d'un régime qui offre uniquement des prestations à cotisation déterminée;
- b) plus de neuf mois après la fin de l'exercice du régime, dans les autres cas.

- (6) Le paragraphe (7) s'applique au régime qui offre des prestations déterminées, autre qu'un régime visé au paragraphe 6 (1), un régime désigné ou un régime à l'égard duquel un choix fait en vertu du paragraphe 5.1 (1) ou (2) est applicable à la date d'établissement de la cotisation, si la fin de l'exercice tombe le 31 mars 1995 ou après cette date.

- (7) L'administrateur d'un régime auquel s'applique le présent paragraphe dépose, en annexe à la déclaration annuelle, un

certificat de cotisation au Fonds de garantie des prestations de retraite.

- (8) L'administrateur d'un régime qui offre des prestations déterminées et à l'égard duquel un choix fait en vertu du paragraphe 5.1 (1) ou (2) est applicable à la date d'établissement de la cotisation, autre qu'un régime visé au paragraphe 6 (1), dépose, en annexe à la déclaration annuelle, un certificat de Fonds de garantie relatif à un régime admissible qui atteste les éléments suivants:

- a) le passif du Fonds de garantie rattaché au régime;
- b) la base de cotisation au Fonds de garantie applicable au régime;
- c) le calcul du montant de la cotisation visée au paragraphe 37 (6).

- (9) Un actuaire certifie l'exactitude des renseignements exigés par les alinéas (8) a) et b) et l'administrateur du régime certifie l'exactitude des renseignements exigés par l'alinéa (8) c) et les autres renseignements fournis dans le certificat de Fonds de garantie relatif au régime admissible.

7. Le paragraphe 37 (1) du Règlement est modifié par insertion de «régime désigné ou un» après «autre qu'un» à la deuxième ligne.

8. (1) Le paragraphe 47 (1) du Règlement est abrogé et remplacé par ce qui suit:

- (1) Les prestations de retraite offertes par les régimes suivants ne sont pas garanties par le Fonds de garantie et sont soustraites à l'application du paragraphe 18 (7) et des articles 30 et 37:

- 1. Le régime de retraite amélioré des employés de la cité de Chatham.
- 2. Le régime de retraite de la cité d'Etobicoke.
- 3. Le régime de retraite des employés de la ville de Gananoque.
- 4. La caisse de retraite des employés de la cité de Hamilton.

5. La caisse de retraite de Hamilton-Wentworth.
 6. Le régime de retraite des employés du service des pompiers de la cité de Kitchener.
 7. Le régime de retraite des employés du canton de Lochiel.
 8. Le régime de retraite des employés de la cité de North Bay.
 9. Le Régime de retraite des employés municipaux de l'Ontario.
 10. Le Régime de retraite du Syndicat des employés de la fonction publique de l'Ontario.
 11. Le régime de retraite des employés de la cité d'Oshawa.
 12. La caisse de retraite de la cité d'Ottawa.
 13. Le régime de retraite des employés de la ville de Tillsonburg.
 14. Le régime de retraite de la municipalité de la communauté urbaine de Toronto et des employeurs participants.
 15. La caisse de retraite des policiers de la municipalité de la communauté urbaine de Toronto.
 16. La caisse de retraite des employés municipaux de Toronto.
 17. La caisse de retraite du service des pompiers de Toronto.
 18. Le régime de retraite des employés de la cité de York.
- (2) **L'article 47 du Règlement est modifié par adjonction du paragraphe suivant:**
- (2.1) Les régimes suivants sont des catégories prescrites de régimes de retraite pour l'application de la disposition 6 de l'article 85 de la Loi:
1. Les régimes désignés.
 2. Tout régime, pendant la période de cinq ans qui suit le moment où il cesse d'être un régime désigné.
9. **Le paragraphe 68 (2) du Règlement est abrogé et remplacé par ce qui suit:**
- (2) La modification de la déclaration des politiques et des objectifs de placement est déposée dans les 90 jours qui suivent l'adoption de la modification.
10. **Les paragraphes 83 (1), (1.1) et (2) du Règlement sont abrogés et remplacés par ce qui suit:**
- (1) La demande d'enregistrement d'un régime est rédigée:
- a) selon la formule 1, si elle est remise au surintendant avant le 1^{er} juillet 1995;
 - b) selon la formule approuvée par le ministre et fournie par le surintendant, si elle est remise au surintendant le 1^{er} juillet 1995 ou après cette date.
- (1.1) La demande d'enregistrement d'une modification apportée à un régime est rédigée:
- a) selon la formule 1.1, si elle est remise au surintendant avant le 1^{er} juillet 1995;
 - b) selon la formule approuvée par le ministre et fournie par le surintendant, si elle est remise au surintendant le 1^{er} juillet 1995 ou après cette date.
- (2) La déclaration annuelle visée au paragraphe 20 (1) de la Loi est rédigée:
- a) selon la formule 2, si l'exercice du régime visé par la déclaration prend fin avant le 31 mars 1995;
 - b) selon la formule approuvée par le ministre et fournie par le surintendant, si l'exercice du régime visé par la déclaration prend fin le 31 mars 1995 ou après cette date.
- (2.1) Le certificat de cotisation au Fonds de garantie des prestations de retraite visé au paragraphe 18 (7) est rédigé selon la formule approuvée par le ministre et fournie par le surintendant.

Announcements

Federal-Provincial Agreement Expected to Streamline Regulatory Framework

The Ontario Ministry of Finance, the federal Ministry of National Revenue and the Pension Commission of Ontario are expected to sign an agreement by March 31, 1995 which would reduce administrators' costs and paperwork needed to comply with federal and provincial annual information requirements.

The agreement, which creates a single annual information return to replace separate returns which had been required previously, is expected to improve regulation of pension plans, service to plan administrators and efficiency generally. The joint AIR is effective on and after March 31, 1995.

Pension plans will begin using the new return on their fiscal year end date occurring on or after March 31, 1995. The filing deadline is nine months after the fiscal year end date for pension plans with defined benefits and six months after the fiscal year end date for all other plans.

Other efforts have been made to harmonize requirements. Revenue Canada will amend its filing deadline to correspond to Ontario's dates which are based on the pension plan's fiscal year end. This means that administrators will be able to maintain a single set of books.

Ontario will phase out use of provincial registration numbers on April 1, 1995 and adopt Revenue Canada's seven digit registration number to identify registered pension plans.

Pension Plans Known Only By the Seven Digit Revenue Canada Registration Number

Administrators are reminded that on April 1, 1995 the provincial registration number will not be used for pension plan identification purposes. Please ensure that the seven digit registration number is used in all documentation and correspondence with the PCO.

Supplement to the Spring Issue of the *PCO Bulletin*

A supplement containing all prescribed forms, including specimen samples and instructions for the joint AIR and the PBGF Assessment Certificate, has been developed and is being distributed along with this issue of the *PCO Bulletin* to everyone on the PCO's mailing list.

All prescribed forms have been revised or reworked recently to improve compliance rates and efficiency generally. Because of the nature and extent of the changes to Forms 1, 1.1 and 2, and because of the creation of a new prescribed form, the PBGF Assessment Certificate, a supplement seemed to be an effective way to present the new forms to pension stakeholders.

The supplement is intended to provide Administrators with master proofs of all prescribed forms. As such, we encourage duplication of Forms 1, 1.1, 3, 4 and the IPR by photocopier to meet compliance requirements. Individually addressed AIRs and the PBGF Assessment Certificates will be sent to administrators by mail after the fiscal year end date of the pension plan.

Deadlines for the Submission of Applications to the Commission - 1995 Update

Anyone making submissions for consideration by the tribunal at its monthly meetings should be aware that deadlines for submitting applications to staff have been established. These deadlines are meant to ensure that staff and members of the Commission have adequate time before the meeting to review the applications.

Although applications will be dealt with as quickly as possible upon receipt, it is not possible to assure that applications will be considered by the Commission if they do not meet the deadlines indicated below. Furthermore, delays will result if applications are not complete when reviewed by staff.

The Pension Commission convenes on the following Thursdays in 1995 and the deadline for the submission of applications is generally three months prior to the date of the meeting:

Commission Meetings

March 30, 1995
April 27, 1995
May 25, 1995
June 29, 1995
July 27, 1995
September 28, 1995
October 26, 1995
November 23, 1995
December 14, 1995

Submissions Deadlines

was mid December, 1994
was January 26, 1995
was February 23, 1995
was March 30, 1995
April 27, 1995
June 29, 1995
July 27, 1995
August 24, 1995
September 14, 1995

Corrections to Errors

BBS Phone Number

If you wish to contact CRS Online to become a subscriber or to make enquiries about the PCO Conference on the BBS, please call only the following numbers: **416-213-6000** or, toll free from anywhere in North America **1-800-563-2529**. For technical support contact **416-213-6001**.

Otis Decision - November 17, 1994

In the Winter 1995 issue there is a typo on page 60 concerning the Otis matter. The date of the decision of the Commission in respect of an application by Otis Canada Inc. should read November 17, 1994.

Designated Pension Plans to Notify PCO of Their Status

Before February 23, 1995, designated pension plans were known as such only to Revenue Canada because of the definition in the Regulations under the *Income Tax Act* (Canada).

Effective February 23, 1995 the Regulations were amended to exempt designated plans from the *Pension Benefits Act* funding requirements to the extent that contributions exceed the maximums permitted by income tax rules. For fiscal year ending dates after March 31, 1995, designated plans will no longer be required to pay Pension Benefits Guarantee Fund (PBGF) assessments, and PBGF coverage will cease to apply.

Until now, there has been no need for PCO records to identify pension plans as designated plans. Since the definition now exists in both tax and Ontario pension law, it is necessary to update PCO records.

PBGF assessment certificates are routinely sent to administrators of all applicable pension plans. Until the PCO is advised by the administrator that a pension plan is a designated plan, the PCO will continue to mail PBGF assessment certificates.

Please mail or fax a one page letter to the Pension Officer or Analyst indicating the name(s) and the seven-digit (Revenue Canada) registration number(s) of the designated plans.

Index of PCO Published Information

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How to Administer Locked-in Money as a Pension

The pension legislation of each jurisdiction in Canada which regulates employment pension plans permits, in specified circumstances, the transfer of locked-in pension money to tax-sheltered arrangements outside a Registered Pension Plan (RPP). Transferees, the financial institutions and other businesses that receive locked-in money, are charged with the responsibility of administering that money as a pension. Many plan administrators and transferees are uncertain about what the statutory requirements are and how they affect a former plan member's access to the locked-in money.

All locked-in money is dedicated to the provision of lifetime retirement income. However, no two pension statutes in Canada have identical rules concerning the use and ongoing administration of locked-in money. The key to understanding the rules that determine how any individual transfer amount must be administered, is knowing which pension legislation governs the transfer. The legislation of that same jurisdiction will continue to apply after the transfer.

Employment Pension Plans - Standards Legislation in Canada

Employment pension plans must be registered under the statute of one of the following federal or provincial jurisdictions in Canada:

Alberta	<i>Employment Pension Plans Act</i>
British Columbia	<i>Pension Benefit Standards Act</i>
Manitoba	<i>Pension Benefits Act</i>
New Brunswick	<i>Pension Benefits Act</i>
Newfoundland	<i>Pension Benefits Act</i>
Ontario	<i>Pension Benefits Act</i>
Prince Edward Island	<i>Pension Benefits Act</i>
Quebec	<i>Supplemental Pension Plans Act</i>
Saskatchewan	<i>Pension Benefits Act</i>
federal	<i>Pension Benefits Standards Act (Canada)</i>

The *Pension Benefits Standards Act* (Canada), (the "PBSA (Canada)") is the federal statute which regulates pensions for plan members who work in "included employment". Transfers of locked-in money made on behalf of persons who worked in "included employment" must be administered as required by the PBSA Canada. "Included

employment" is work in any undertaking or business that is within the legislative authority of Parliament (i.e., radio broadcasting, transportation, banking, etc.). A complete definition of included employment is contained in the *PBSA* (Canada). Pension plan members who are employed in the Northwest Territories and the Yukon Territories are covered by the *PBSA* (Canada).

Provincial statutes regulate pensions for plan members who are employed in those provinces and who do not work in included employment. The administration of locked-in money transferred on behalf of a person who terminates employment in a specific province continues to be subject to that provincial statute. If a plan member does not actually report to work in any one province, that individual is considered to be employed in the province in which the employer who pays the individual's remuneration is located.

Pension Plans with Members in More than One Province

If all the members of a pension plan are employed in one province, the plan must be registered under the statute of that province. That statute will regulate how the plan is funded and administered in general. The statute will also regulate how and when portability options become available to the members of the plan. All locked-in transfers from the pension plan must be administered as required by the statute of the jurisdiction of registration.

Similarly, if all of the members of a pension plan are employed in included employment, the plan must be registered under the *PBSA* (Canada). All matters related to that plan are subject to the requirements of the *PBSA* (Canada).

The administration of a pension plan and of locked-in transfers made from that plan becomes more complex where all plan members are not employed in one province or are not all employed in included employment. Where plan members work in two or more provinces or where only some members work in included employment, the pension plan is registered in the province where the majority of the plan members are employed. If the plurality of the members work in included employment, the pension

plan is registered under the *PBSA* (Canada). Under these circumstances, the statute of the jurisdiction of registration applies with respect to only the members in that jurisdiction.

For example, where a pension plan registered under the *Pension Benefits Act* (Ontario) (The "PBA (Ontario)") has members who work in included employment or who are employed in other provinces of Canada, the Ontario statute regulates all matters including portability for only the Ontario members. Locked-in money transferred with respect to the Ontario members remains subject to the *PBA* (Ontario). This means that any transfer to a Locked-in Retirement Account (a "LIRA") or to a Life Income Fund (a "LIF") is permitted only where the LIRA or LIF issued by a financial institution meets Ontario's requirements.

For the same plan, the statutes of any other applicable jurisdictions regulate when and what transfer options are available to the remaining members of the pension plan. For instance, the authority to permit a transfer of locked-in money for a plan member who terminates employment in Manitoba will come from the *Pension Benefits Act* (Manitoba). Transferred money must be administered as required by the statute that permits the transfer in the first place.

The Responsibilities of the Plan Administrator and the Transferee

Some jurisdictions maintain approved lists of financial institutions that provide LIRAs and LIFs which meet the requirements of their respective statutes. When a transfer is being made on behalf of an individual who is subject to the legislation of one of those jurisdictions, the plan administrator may not complete a transfer to any financial institution, LIRA or LIF that does not appear on the appropriate approved list.

Where a jurisdiction does not maintain an approved list of LIFs or LIRAs, information concerning the pension legislation that regulates the administration of locked-in money must be provided by the administrator of the transferor plan. Ontario does not maintain a list of approved LIFs and LIRAs and financial institutions. A plan administrator who is making a transfer with respect to an Ontario member, former member or a spouse of one of these individuals

is subject to subsection 20(3) of the Regulations under the *PBA* (Ontario). The plan administrator cannot complete the transfer until the transferee has agreed to continue administration in accordance with the requirements of the *PBA* (Ontario).

Requirements of the Ontario Locked-in Retirement Account (the “LIRA”)

The *Pension Benefits Act* (Ontario), (the “*PBA* (Ontario)”) regulates pensions for plan members who are employed in Ontario and who do not work in “included employment”. On termination of employment or when a pension plan is terminated, clause 42(1)(b) of the *PBA* (Ontario) gives Ontario members and former members the right to transfer the value of their pensions to a prescribed retirement savings arrangement. In some situations, the spouses of Ontario members and former members may also have a right to portability.

Until the end of 1992, the single prescribed retirement savings arrangement was a registered retirement savings plan which satisfied the contractual requirements of two statutes. The arrangement was required to be established as a Registered Retirement Savings Plan (an “RRSP”) in accordance with the *Income Tax Act* (Canada), (the “*ITA*”). In addition, the written contract for the RRSP (the specimen document(s)) had to contain all of the provisions of subsections 21(2) and 21(4) of the Regulations under the *PBA* (Ontario). The pension industry informally called the arrangement a locked-in Registered Retirement Savings Plan (a “locked-in RRSP”).

In the latter part of 1992, Ontario amended the Regulations to introduce a second prescribed retirement savings arrangement, the Life Income Fund (the “LIF”). The availability of the LIF as a transfer option is subject to restrictions relating to eligibility for retirement. Articles on the Ontario LIF have been published in the *PCO Bulletin* and are available on the PCO Conference #149 on the BBS.

Introduction of the LIRA

On June 24, 1994, the Regulations were amended to introduce the locked-in retirement account (the “LIRA”). The LIRA replaced the original prescribed retirement savings arrangement.

What is an Ontario LIRA?

For the purpose of clause 42(1)(b) of the *PBA*, a LIRA must be an RRSP established under the *ITA*. In addition, the specimen document(s) for the LIRA must satisfy the contractual requirements set out in subsections 21(2), (2.1) and (4) of the Regulations.

Many of Ontario’s statutory requirements are different from those of the other Canadian pension jurisdictions. The contractual provisions under subsections 21(2), (2.1) and (4) of the Regulations reflect Ontario’s statutory requirements. This means that the contract for an Ontario LIRA differs from the contract for, for example, a Saskatchewan LIRA. Consequently, locked-in money that is required to be administered in accordance with the *PBA* (Ontario) may not be transferred to a prescribed retirement savings arrangement of another pension jurisdiction.

What are the Contractual Requirements of a LIRA?

Money that is locked-in under the *PBA* (Ontario) must ultimately be used to purchase a life annuity. This means that any subsequent transfer from an Ontario LIRA, of the initial transfer amount plus accrued interest and any other investment earnings, must be restricted to four prescribed transfer arrangements identified in the LIRA contract. The LIRA documents must also set out the conditions that apply to any subsequent transfer. Provision must be made in the LIRA documents for the payment of a death benefit and for an assignment of assets on marriage breakdown.

Transfers From a LIRA

In accordance with subsection 21(2)(a), the transferee institution that is now responsible for the administration of the locked-in money may only comply with a request to make a transfer to:

- the pension fund of a subsequent employer’s Registered Pension Plan, if that employer is willing to accept the transfer,
- another Ontario LIRA,
- an Ontario LIF, or
- a Canadian insurance company for the purpose of purchasing an immediate or deferred life annuity that satisfies the requirements of section 22 of the Regulations.

Conditions Applicable to Transfers from a LIRA

1) Confirmation of Continued Administration

The LIRA contract must reflect the requirements of clauses 21(2)(f) and (g). Whenever a subsequent transfer is requested by the owner of the LIRA, the transferor must advise the new transferee, in writing, that the money is locked-in and must be administered as required by the *PBA* (Ontario) and the Regulations. The transferor cannot complete a transfer until the new transferee has agreed to comply with the administrative requirements.

Although it is a requirement of Schedule 1 to the Regulations (the LIF Schedule) rather than subsection 21(2), all other matters being satisfactory, the transferor cannot complete a transfer to a LIF unless the spouse, if any, has consented in writing to the transfer.

2) The Earliest Date Pension Benefits May Commence to be Paid

Restrictions related to eligibility for immediate retirement pertain to requests to transfer locked-in money to an Ontario LIF or to purchase an immediate annuity. The administrator of the LIRA, the transferor, may not comply with a request to make a transfer for either purpose if the owner of the LIRA is not eligible to retire under the terms of the pension plan from which the money was originally transferred.

In accordance with subsection 21(2.1), a LIRA contract must indicate the earliest date that payments from an annuity may commence. Payments may not commence earlier than the date the individual attains 55 years of age, or at any earlier date the individual could have begun receiving payment of a pension under the terms of the pension plan from which the locked-in funds were originally transferred.

The identical restrictions under Schedule 1 to the Regulations also apply to the earliest date payments may commence from a LIF. Information about the earliest date the owner of a LIRA may begin receiving payments from an annuity or a LIF should be obtained from the administrator of the plan from which the transfer originated.

Payment of a Death Benefit

The LIRA contract must contain a provision that establishes the treatment of a death benefit as provided by clause 21(2)(h). In accordance with section 48 of the *PBA* (Ontario), when the owner of the LIRA dies prior to purchasing an annuity, the balance of the LIRA must be payable to a spouse (married or common law) who satisfies the definition of "spouse" under the *PBA* (Ontario).

This legislated entitlement does not apply if the spouse had previously waived, in the prescribed manner, entitlement to the death benefit. Also, a spouse who was living separate and apart from the owner of the LIRA at the time of that person's date of death also has no legislated entitlement to the death benefit.

In circumstances where there is no spouse, the spouse has waived entitlement, or a breakdown in the marriage occurred prior to the date of death, the death benefit may be paid to the designated beneficiary or to the estate of the deceased, as applicable. In all circumstances, the death benefit may be paid, or transferred, as the case may be, as an unlocked amount.

Assignment of Locked-in Money on Marriage Breakdown

In accordance with clauses 21(2)(b) and (c), the LIRA contract must provide that all money held under the LIRA cannot be assigned, charged, anticipated or given as security except as permitted by subsection 65(3) of the *PBA* (Ontario). On marriage breakdown, this exception permits the assignment, by an order under the *Family Law Act* or by a domestic contract as defined in Part IV of that Act, of an interest in the balance of a LIRA. Subsection 51(2) of the *PBA* (Ontario), permits no more than 50 per cent of the balance of a LIRA to be assigned to a spouse or former spouse on marriage breakdown.

Any portion of a LIRA that is assigned as a result of a court order on marriage breakdown must continue to be administered as a pension. This means that payment must be made as a transfer to a locked-in retirement savings arrangement of the spouse or former spouse or to purchase a lifetime annuity for the spouse or former spouse.

Shortened Life Expectancy of the Owner of a LIRA

Only in one very limited circumstance may an owner of a LIRA receive payment from the LIRA. The LIRA contract must reflect the requirements of clauses 21(2)(d) and (e). Where the pension plan from which the locked-in money was originally transferred contained a section 49 provision that permitted a variation in payment of a pension or a deferred pension because of a significantly shortened life expectancy, that provision will also apply to the LIRA.

After obtaining proof that the prior employer's pension plan contains a shortened life expectancy provision, the transferee institution that is responsible for administering the LIRA may make a decision concerning the release of locked-in funds. Any decision to pay money in a LIRA to the owner of the LIRA should be made on the basis of a written opinion of a qualified medical practitioner.

No Differentiation on the Basis of Sex

Subsection 21(4) requires that the contract for the LIRA contain a statement as to whether the initial transfer amount was determined on a basis that differentiated on the basis of sex. This information is required because when an annuity is eventually purchased, the annuity cannot differentiate on the basis of the sex of the former pension plan member unless the initial transfer amount was determined on a sex distinct basis. In most cases, locked-in money that represents the value of a pension earned on or after January 1, 1987 must be determined on a basis that does not differentiate on the basis of the sex of the former plan member.

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Subsections 20 and 21 of Regulation 909 under the PBA (Ontario) follow:

20. (1) A member of a pension plan who makes an election under section 42 of the Act or a person who is entitled to make an election under subsection 51(5) of the Act shall deliver a completed direction to the administrator within sixty days after termination of employment or, in the case of a person entitled to make an election under section 51(5) of the Act, within sixty days after receipt of notice of termination.

- (2) The administrator shall comply with an election made under subsection (1) within sixty days after the receipt of all information required by the administrator to comply with the direction.
- (3) The administrator shall not transfer the commuted value of a pension or deferred pension except where the transferee agrees to administer the amount transferred as a pension or deferred pension in accordance with the Act and this Regulation. R.R.O. 1990, Reg. 909, s.20.

21. (1) This section governs the transfer of an amount equal to the commuted value of a deferred pension under clause 43(1)(b) of the Act into a prescribed retirement savings arrangement.

- (1.1) The following are the prescribed retirement savings arrangements:
 - 1. A life income fund.
 - 2. A locked-in retirement account.
 - 3. An RRIF.
 - 4. An RRSP.
- (1.2) If the amount to be transferred does not exceed the amount prescribed for such a transfer under the *Income Tax Act* (Canada), it may be transferred *only* into a life income fund or a locked-in retirement account.
- (1.3) If the amount to be transferred is greater than the amount prescribed for such a transfer under the *Income Tax Act* (Canada),
 - (a) that portion that does not exceed the prescribed amount may be transferred only into a life income fund or a locked-in retirement account; and
 - (b) that portion that exceeds the prescribed amount may be transferred only as described in subsection (1.4) or (1.5).
- (1.4) If the amount transferred under clause (1.3)(a) is transferred into a life income fund, the amount transferred under clause (1.3)(b) may be transferred only into an RRIF.

- (1.5) If the amount transferred under clause (1.3)(a) is transferred into a locked-in retirement account, the amount transferred under clause (1.3)(b) may be transferred only into an RRSP. O.Reg. 409/94, s.3(1).
- (2) A contract to establish a locked-in retirement account shall provide that,
- (a) no money transferred, including all investment earnings, will be withdrawn except,
 - (i) prior to maturity, to transfer the money to the pension fund of a registered pension plan,
 - (ii) prior to maturity, to transfer the money to another locked-in retirement account,
 - (iii) to purchase an immediate or deferred life annuity described in subsection (2.1) that is provided by a person authorized under the laws of Canada or a province to sell annuities as defined in section 248 of the *Income Tax Act* (Canada) under an insurance contract that meets the requirements of section 22,
 - (iv) prior to maturity, to transfer the money to a life income fund;
 - (b) no money transferred, including interest, will be assigned, charged, anticipated or given as security except as permitted by subsection 65(3) of the Act;
 - (c) any transaction purporting to assign, charge, anticipate or give as security money transferred, except as permitted by subsection 65(3) of the Act, is void;
 - (d) except as permitted in section 49 of the Act, no money transferred, including interest, will be commuted or surrendered during the lifetime of the former member;
 - (e) any transaction that contravenes clause (d) is void;
 - (f) the transferee will not permit any subsequent transfer except,
 - (i) where the transfer is permitted under the Act and the regulations, and
 - (ii) the subsequent transferee agrees to administer the amount transferred as a pension or deferred pension in accordance with this Act and the regulations;
 - (g) the transferee will advise in writing any subsequent transferee that the amount transferred must be administered as a pension or deferred pension under the Act and this Regulation; and
 - (h) on the death of the holder of the locked-in retirement account, the transferee will administer the money in accordance with section 48 of the Act. R.R.O. 1990, Reg. 909. s.21(2); O.Reg. 564/92, s.1(2,3); O.Reg. 409/94, s.3(2-4); O.Reg. 558/94, S.2(1).
- (2.1) The annuity must not begin before the earlier of,
- (a) the earliest date on which the former member is entitled to receive pension benefits under the Act as a result of termination of employment or termination of membership in any pension plan from which money was transferred into the locked-in retirement account; or
 - (b) the earliest date on which the former member is entitled to receive pension benefits under any pension plan described in clause (a) as a result of termination of employment or termination of membership in the plan. O.Reg. 409/94, s.3(5).

Superintendent of Pensions Notices/Orders

Notices of Proposal to Make an Order

Please note that, except as otherwise indicated, the "PBA" refers to the PBA, R.S.O. 1990, c.P8 and the "Regulations" refers to Regulation 909, R.R.O. 1990, as amended under the PBA.

The Superintendent, pursuant to subsection 89(5) of the PBA [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) Pension Plan for the Employees of Cathcart Truck Lines (Toronto) Limited, C-12913 (January 16, 1995)
- 2) Pension Plan for the Employees of Value Home Fashions Inc., C-15398 (February 14, 1995)

Orders

The Superintendent issued Orders, pursuant to section 69 of the PBA [Wind-up Orders], as follows (effective date of wind up and date of order indicated, respectively):

- 1) Pension Plan for the Salaried Employees of Adpak International Limited (C-101824), (effective May 20, 1993), January 20, 1995
- 2) Pension Plan for Hourly Employees of Adpak International Limited (C-101823), (effective May 20, 1993), January 20, 1995
- 3) Staff Pension Plan for the Employees of Contract Hardware Specialists (1974) Limited (C-103908), (effective November 22, 1991), January 20, 1995.
- 4) Revised Pension Plan for Employees of UBA Trading Company Limited (C-13775), (effective March 31, 1994), January 20, 1995
- 5) Pension Plan for Employees of LGT Graphics Limited (C-104524), (July 9, 1993), January 23, 1995
- 6) Pension Plan for Employees of Truck & Tractor Equipment Limited (C-102019), (effective March 1, 1994), February 2, 1995

- (3) An immediate or deferred life annuity that is purchased with funds from a life income fund or locked-in retirement account shall not differentiate on the basis of the sex of the beneficiary where the fund or account resulted from the transfer of the commuted value of a pension benefit which value was determined in a manner that did not differentiate on the basis of sex. O.Reg. 558/94, s.2(2).

- (4) A life income fund or locked-in retirement account shall contain a statement as to whether the commuted value of the pension benefit transferred to it was determined on a basis that differentiated on the basis of sex. O.Reg. 558/94, s.2(3).

- (5) REVOKED: O.Reg. 558/94, s.2(4)

21.1 (1) This section applies if an amendment to a pension plan with defined benefits converts them to defined contribution benefits. O.Reg. 409/94, s.4, part.

- (2) A member with defined benefits who elects to convert them in accordance with the amendment to the pension plan is entitled to require the administrator to transfer the amount described in subsection (4) to an RRSP. O.Reg. 409/94, s.4, part; O.Reg. 558/94, s.3.(3)

The administrator shall make the transfer in accordance with the instructions of the member but only if the transfer complies with the Act and this Regulation.

- (4) The amount that may be transferred is that portion of the amount of the commuted value of the member's defined benefits that exceeds the amount prescribed under the *Income Tax Act* (Canada) for a transfer of benefits from a defined benefit provision of a pension plan to a money purchase provision of the same plan.

- (5) A transfer made in accordance with this section is prescribed for the purposes of clause 63(5)(c) of the Act. O.Reg. 409/94, s.4 part.

- 7) Employees Pension Plan for Employees of Ambient Systems Limited (C-103251), (August 25, 1989), February 16, 1995
- 8) Retirement Plan for the Employees of Bayweb Limited and Muskoka Web Limited (C-17781), (effective June 30, 1989), February 27, 1995

Tribunal Activities

This section summarizes matters related to the Pension Commission of Ontario.

1995 Dates for Commission Meetings

The Pension Commission will convene on the following Thursdays in 1995:

March 30, April 27, May 25, June 29, July 27, September 28, October 26, November 23, and December 14. There will not be a Commission meeting in August, 1995. For an update on the deadlines for submissions prior to an application being considered at a Commission meeting, please refer to the Announcements section.

PCO Board Members

The following members comprise the Commission:

Eileen E. Gillese, Chair
 Monica J. Townson, Vice Chair
 Darcie L. Beggs
 Shiraz Y.M. Bharmal
 Kathryn M. Bush
 Donald G. Collins
 C. S. (Kit) Moore
 Joyce A. Stephenson

Frequently Asked Questions and Answers

This column will appear from time to time to deal with questions of procedure which are frequently addressed to the Registrar.

Q. When and how can a matter before the Commission be adjourned?

- A. If the Commission has not begun to hear a matter, the applicant may withdraw it by notifying the Registrar in writing.

If the Commission has begun to consider or hear the matter, the applicant or any of the parties in the matter can ask that a matter be adjourned by submitting a written request to the Registrar. The Registrar will bring the request for an adjournment to the attention of the Chair, who will invite submissions on the matter from all parties. The Chair or hearing panel will decide whether to grant the request for adjournment.

The Commission or hearing panel may adjourn a matter where it has questions or requires more information. In such a case, the Registrar will provide notice to all parties. The hearing panel may then decide the matter on the basis of written submissions, or may decide to convene an oral hearing before deciding the issue. Pre-hearing conference procedures were published in the *PCO Bulletin*, Vol. 4, Issue 1 (August 1993) and are available on the PCO conference #149 on the BBS at index number P300-700.

In all cases, the Registrar will confirm when an adjournment has been granted or that the matter has been withdrawn, and will notify all the parties.

Q. When a matter scheduled to be heard by the Commission at its monthly meeting has been adjourned, how does it get back on the agenda?

- A. To bring such a matter back before the Commission, the party requesting the adjournment, or any of the other parties if they wish the matter to be rescheduled, should write to the Registrar requesting that the matter be scheduled to be brought back before the Commission. Where the hearing panel has requested the adjournment, the panel will either request the Registrar to reschedule the matter once the additional information requested has been received, or request that the Registrar schedule a hearing.

The Registrar will advise the applicant and all other parties of the new date on which the matter will be heard. Every effort will be made to see that these matters are heard quickly, if possible, at the next meeting of the Commission.

Q. How does a party arrange to have a court reporter present for a Commission hearing?

A. The Commission does not use a court reporter in any of its proceedings. If a court reporter is required, it is up to the party who wishes this service to make the arrangements and to advise the Registrar. Costs associated with the services of the court reporter will be borne by the party who requires the service. However, the Registrar will assist with any physical arrangements necessary to accommodate the court reporter.

Q. What is the Commission policy on being heard by the Commission at its monthly meetings?

A. All parties are given a copy of the staff report on any matter before the Commission in advance of the meeting. Applications are normally decided on the basis of written documentation only. However, parties are welcome to attend monthly Commission meetings and wait in an anteroom until their application is heard by the Commission. Where there are questions, the hearing panel may invite parties in to the meeting to clarify information before the panel. Where there are outstanding issues on which the hearing panel wishes to have submissions, it will normally request that those submissions be made in writing by all parties.

The Commission is bound by the principle of fairness in deciding whether to invite any party to attend the portion of the meeting where the application will be heard. It will assess each case in which a party wishes to attend to determine whether it is acceptable to hear from one party if other interested parties in the case have not had the same opportunity.

If parties do attend, regardless of whether they are invited in, the Commission will strive to advise them of its decision with respect to the application once a decision has been reached. All parties will be advised by mail of the Commission's decision.

Q. How is a Commission consent to surplus withdrawal filed with the courts?

A. The applicant is requested to submit a draft Consent document for signature by the Chair. If the Commission grants its consent without conditions, the Consent will be signed by the Chair.

If the consent granted by the Commission is conditional, the conditions imposed must be met prior to the Consent being filed with the Court. Once the Commission is satisfied that the conditions have been met, the Registrar will draft the conditional Consent to be signed by the Chair of the Commission, or the applicant may be requested to draft the Consent and forward six original copies for the Chair's signature.

In all cases, the Registrar will file the signed Consent with the Court.

Hearings Before the Commission

Public Service Pension Plan (C-6672)

Appeal by Ontario Public Service Employees Union ("OPSEU") to the Commission with respect to the refusal by the Superintendent of Pensions to make an order requested by OPSEU that the Ontario Pension Board and Management Board Secretariat provide all members of the Public Service Pension Plan with 1992 annual statements by March 31, 1994. AMAPCEO will continue the hearing in the place of OPSEU. The panel consists of Prof. Eileen Gillese, Joyce Stephenson and Monica Townson. A pre-hearing conference was held April 14, 1994 and continued June 16, 1994. Prof. Gillese presiding. Submissions are to be exchanged after which a hearing date will be set by the Registrar.

Imperial Oil Limited Retirement Plan (C-8884) and Pension Plan for Employees of McColl-Frontenac Inc. (C-4280) (the "Plans")

Counsel for a group of former employees is appealing, under section 89 of the PBA, the decisions of the Superintendent of Pensions dated May 7 and 18, 1993 to register an amendment of August 1991 to Section 4.3 of the Plans. A pre-hearing conference was held October 28, 1993 and adjourned *sine die*. The pre-hearing conference was reconvened November 18, 1994 at the request of the applicant. A hearing into the question of jurisdiction was held March 2, 1995. If the Commission finds it has jurisdiction, the hearing will continue on May 23 and 24, 1995.

Pension Plan for Designated Executive Employees of Libbey-St. Clair Limited, (C-103741)

The Commission considered the application to issue a Notice of Proposal pursuant to subsection 90(1) of

the PBA that the Guarantee Fund applies to the Pension Plan for Designated Executive Employees of Libbey-St. Clair Limited, Registration No. C-103741, at its meeting of November 17, 1994. The Commission deferred making a decision pending a complete staff review of the wind-up report.

Non-Contributory Pension Plan for Bargaining Unit Employees of Etobicoke Plant -Metropolitan Toronto (C-15791)

The Commission considered the application pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended to a payment of surplus from the Non-contributory Pension Plan for Bargaining Unit Employees of Etobicoke Plant - Metropolitan Toronto, Registration No. C-15791, to Canadian General Tower Limited at its meeting of November 17, 1994. The Commission deferred making a decision on this application pending additional submissions from the applicant to satisfy the Commission that:

- a) the application satisfies clause 79(3)(b) of the Act; and,
- b) the application satisfies clause 8(1)(b)(iii) of the Regulations and Commission policies in respect of that section.

Pension Plan of Corewall Inc. for Don Paton, C-103167

A proposal by the Superintendent of Pensions to make an Order under section 87 of the Act respecting the Pension Plan of Corewall Inc. for W. Don Paton. The panel consists of Prof. Eileen Gillese, Monica Townson and Kit Moore. A pre-hearing conference by way of a telephone conference call is scheduled for March 9, 1995. Prof. Gillese, Chair will preside.

**Commission Decisions - Applications
Approved Since November, 1994**

Applications under clause 8(1)(b) of Regulation 909, R.R.O. 1990 (as amended by O. Reg. 743/91) and subsection 78(1) of the PBA - Surplus Withdrawal on Plan Wind up

At the Commission meeting held December 15, 1994, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) Pension Plan for the Employees of Petrohaul Limited, (C-14209)

Payment of surplus to 309455 Ontario Limited from the Pension Plan for the Employees of Petrohaul Limited, Registration Number C-14209, in the amount of \$367,862 as at September 30, 1994, plus investment earnings thereon to the date of payment.

This decision is rendered in light of the fact that subsection 28(5) of the Regulations to the PBA requires all notices of application for surplus withdrawal to set out "the surplus attributable to employee contributions". In this case, the applicant maintained that no surplus was attributable to employee contributions as surplus entitlement lay with the employer. In view of these facts: that surplus entitlement lies with the employer, that 76% of members and 100% of deferreds and former members consented to the application, that the application could have been made under the grandfathering provisions in the legislation and that if surplus could be tied to employee contributions it would be approximately \$5,300 or about 3.5% of the total sum, the Commission gave its consent. In doing so, the Commission made it clear that it would have been better to have disclosed the sums that might be attributed to employee contributions and it is only because of the many other factors that the Commission did not require the applicant to recommence the application process with a notice which sets out such information. It should be recognized that these reasons may not be acceptable in another case of a similar nature.

(b) Pension Plan for Kitchener Plant - Local 73 United Rubber, Cork, Linoleum and Plastic Workers of America (C-7856)

Payment of surplus to Geon Canada Inc. from the Pension Plan for Kitchener Plant -Local 73 United Rubber, Cork, Linoleum and Plastic Workers of America, Registration Number C-7856, in the amount of \$592,241 as at May 31, 1994, plus investment earnings thereon to the date of payment based on the undertakings by Geon that Geon will undertake to continue to use its reasonable best efforts to locate the outstanding plan members and former members for purposes of facilitating the payment of their surplus entitlement for the 12 month period from

February 15, 1995 to February 15, 1996 and that Geon will attempt to contact such missing persons through Health and Welfare Canada, by working with the Union and using such other means as are necessary to establish contact.

This consent shall not be effective until:

- (i) the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased, or otherwise provided for to the satisfaction of the Commission and, specifically, Geon shall confirm to the Pension Commission of Ontario on or prior to February 15, 1995 that \$176,000 of surplus funds has been paid out to the members and former members; and
- (ii) the counsel for the employees provides the Commission with a letter stating that the employees consent to the alternative submissions to the Commission as set out in the letter of Mr. J.D. Vincent to Mr. L. Martello dated December 13, 1994.

And, the Commission further consents that, if by February 15, 1996, Geon has been unable to contact any missing members or former members of the Plan, any remaining funds left in the trust fund in respect of such missing persons will be paid to Geon, whereupon Geon will undertake to pay to any such missing persons their surplus entitlement together with interest thereon to the date of payment if such persons subsequently contact Geon.

(c) Parkwood Central Ltd. Employee Pension Plan, (C-100669)

Payment of surplus to Westwood Chevrolet Oldsmobile (1993) Limited, from the Parkwood Central Ltd. Employee Pension Plan, Registration Number C-100669, in the amount of \$68,773 as at May 1, 1991, plus investment earnings thereon to the date of payment.

This consent shall not be effective until:

- (i) the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which the member and former member are entitled on the termination of the pension plan, have been paid, purchased or otherwise provided for to the satisfaction of the Commission; and
- (ii) the Commission receives written confirmation from the two plan members that information required to be given in the notice of surplus withdrawal application was given to them.

(d) Executive Employees Supplemental Pension Plan, (C-13333)

Denied Commission consent to the payment of surplus to Revenue Properties Company Limited from the Executive Employees Supplemental Pension Plan, Registration Number C-13333, in the amount of \$159,517 as at September 1, 1991, plus investment earnings thereon to the date of payment.

This decision is based on the following reasons:

The Plan was established effective January 1, 1974 as the Revenue Properties Central Developments Limited Executive Pension Plan and was a non-contributory, final average earnings plan with individual annuity contracts held by trustees.

The original plan document combined the text and trust agreement. Effective December 31, 1977, a new text and trust agreement were issued. The documentation is unclear as to whether the 1974 plan and trust were terminated in 1977 but a letter from GBB Buck Consultants Limited dated December 1, 1992, states that individual policies under the 1974 trust were surrendered and the proceeds transferred to the 1977 trust. If that is the case, the 1974 trust was not terminated and it remains relevant to the issue of entitlement.

The applicant failed to demonstrate to the Commission, whether and how the application satisfied clause 79(3)(b) of the PBA which requires that the "pension plan provides for the payment of surplus to the employer on the wind up of the

pension plan". An inadequate explanation of how the various terms of the pension plan documents were to be interpreted so as to meet the requirements of clause 79(3)(b) was provided.

Moreover, it was not clear that sufficient disclosure of the terms of the relevant Plan documentation was made such that the consents given could be found to be informed.

As a consequence, the applicant failed to meet the requirements of subsection 79(3) of the Act and the Commission rejected its application.

(e) Trican Packaging Inc. Pension Plan, (C-14208)

Payment of surplus to Trican Packaging Inc. from the Trican Packaging Inc. Pension Plan in the amount of \$13,344.10 as at April 30, 1987 plus investment earnings thereon to the date of payment.

At the Commission meeting held January 26, 1995, the Commission consented, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) ARC Automation Services (Canada) Inc. Employees Retirement Plan, (C-15396)

Payment of surplus to ARC Automation Services (Canada) Inc. from the ARC Automation Services (Canada) Inc. Employees Retirement Plan, Registration Number C-15396, in the amount of \$124,067 as at July 1, 1988, plus investment earnings thereon to the date of payment, adjusted by expenses associated with the wind up of the pension plan, remaining surplus estimated to be \$73,689 at May 1, 1994.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons are entitled have been paid, purchased, or otherwise provided for to the satisfaction of the Commission.

(b) Retirement Plan of Burlington Canada Inc. and its Affiliated Companies (C-6698)

Payment of surplus to Burlington Canada Inc. from the Retirement Plan of Burlington Canada Inc. and its Affiliated Companies, Registration Number C-6698, in the amount of \$3,406,177 as at August 31, 1993, plus investment earnings thereon to the date of payment.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased, or otherwise provided for to the satisfaction of the Commission.

(c) The Pension Plan for Designated Employees of Bob Johnston Chevrolet Oldsmobile Limited, (C-15555)

Payment of surplus to Bob Johnston Chevrolet Oldsmobile Limited, from The Pension Plan for Designated Employees of Bob Johnston Chevrolet Oldsmobile Limited, Registration Number C-15555, in the amount of \$84,370 as at December 31, 1987, estimated to be \$157,968 as of October 27, 1994, plus investment earnings thereon to the date of payment, less all expenses associated with the wind up and surplus application.

(d) Pension Plan for Employees of Royal Worcester Spode (Canada) Limited, (C-11876)

Denied Commission consent to the payment of surplus to Royal Worcester Spode (Canada) Limited from the Pension Plan for Employees of Royal Worcester Spode (Canada) Limited in the amount of \$76,537 as at December 31, 1989 plus investment earnings thereon to the date of payment and adjusted for accrued expenses.

The decision is based on the following reasons:

- (i) the applicant failed to demonstrate to the Commission, whether and how the application satisfied clause 79(3)(b) of the PBA which requires that the "pension plan provides for the payment of surplus to the employer on the wind up of the pension plan". An inadequate explanation of how the various terms of the pension plan documents were to be interpreted so as to meet the requirements of clause 79(3)(b) was provided. As less than 100% of plan beneficiaries consented, the argument that a variation of trust took place, was rejected; and
- (ii) defects in the notice led to the Commission not being able to rely on the consents that were provided. In order for a consent to be valid, it must be made based on full information. The notice that was sent, and upon which consents were filed, was defective in that it failed to set out all relevant terms in all documents from the plan's inception.

Moreover, the Commission found the notice to be misleading. Specifically, section 10 entitled "Fairness" states legal conclusions which may not be accurate. That statement coupled with the omissions referred to in the previous paragraph, rendered the notice defective in a material way and left the Commission unable to rely on the consents obtained by the applicant.

As a consequence, the applicant failed to meet the requirements of subsection 79(3) of the PBA and the Commission rejected its application.

Applications Approved under section 8 of Regulation 909, as amended and subsection 78(1) of the PBA - Request for Consent of the Commission to Surplus Withdrawal on Plan Wind Up to Be Filed With the Court

At the Commission meeting held January 26, 1995, the Commission consented, pursuant to subsection

78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) Hawker Siddeley Canada Inc. Non-Contributory Pension Plan 1968, (C-11331)

Based on the application and the submission of documents required under the PBA and Regulations, the consent and support of the application by counsel for the various parties and the undertaking of the applicant that it will make best efforts to locate those members and former members to whom basic benefits are owing, refund of surplus to Hawker Siddeley Canada Inc. out of the Hawker Siddeley Canada Inc. Non-Contributory Pension Plan 1968, Registration No. C-11331, in the amount of \$7,151,052 as at August 31, 1994 plus investment earnings thereon to the date of payment and less estimated expenses.

This consent shall not be effective until:

- (i) the administrator satisfies the Commission that all benefits, benefit enhancements and any other payments to which the members, former members and any other persons who are entitled have been paid, purchased, or otherwise provided for to the satisfaction of the Commission failing which, the administrator shall confirm to the Pension Commission of Ontario that upon expiry of a 30 day period from the date of January 26, 1995, any remaining benefits for those members who cannot be located have been paid to the Public Trustee to be held for their benefit; and
- (ii) surplus remaining in the pension plan after the payment of legal fees, disbursements, costs and expenses shall be divided into two sub-accounts, one sub-account for the benefit of those pension plan members represented by Les Holloway (Sub-account #1) and the other sub-account for the benefit of those pension plan members represented by George Allsop (Sub-account #2). The funds in Sub-account #1 shall be held by Royal Trust for the benefit of those

pension plan members represented by Les Holloway; the funds in Sub-account #2 shall be held by Royal Trust for the benefit of those pension plan members represented by George Allsop. Instructions to Royal Trust with respect to the operation of and disbursement of funds from the sub-accounts will be provided by counsel for the pension plan members and by George Allsop and Les Holloway.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulations once the consent is effective.

(b) Retirement Income Plan for Employees of United Technologies Automotive (Canada) Inc., (C-10007)

Refund of surplus out of the Retirement Income Plan for Employees of United Technologies Automotive (Canada) Inc., Registration No. C-10007, in the amount of \$675,772 as at November 30, 1991 plus investment earnings or losses thereon to the date of payment (surplus estimated to be \$527,000 as at July 1, 1994).

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulations once the consent is effective.

Applications Approved under subsections 63(7) and (8) of the PBA - Return of Member Contributions

At the Commission meeting held December 15, 1994, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

(a) Retirement Benefit Plan for the Employees of the Better Business Bureau of Metropolitan Toronto, (C-14788)

Refund of member required contributions from the Retirement Benefit Plan for the Employees of the Better Business Bureau of Metropolitan Toronto, Registration Number C-14788, in the amount of \$71,862 as at December 31, 1991 plus interest to the date of payment.

At the Commission meeting held January 26, 1995, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

(a) Pension Plan for Employees of Comcore/BBDO Inc., (C-4292)

Refund of member required contributions from the Pension Plan for Employees of Comcore/BBDO Inc., Registration Number C-4292, in the amount of \$517,839.84 as at January 31, 1992 plus interest to the date of payment.

(b) Pension Plan for Designated Employees of Comcore/BBDO Inc., (C-15609)

Refund of member required contributions from the Pension Plan for Designated Employees of Comcore/BBDO Inc., Registration Number C-15609, in the amount of \$58,037.66 as at January 31, 1992 plus interest to the date of payment.

(c) Pension Plan for Employees of General Publishing Company Limited, (C-11679)

Refund of member required contributions from the Pension Plan for Employees of General Publishing Company Limited, Registration Number C-11679, in the amount of \$176,354 as at December 31, 1986 plus interest to the date of payment.

Applications Approved under subsection 78(4) of the PBA - Return of Overpayment

At the Commission meeting held December 15, 1994, the Commission consented pursuant to subsection 78(4) of the PBA to the refund of overpayments as follows:

(a) The Pension Plan for Group "A" Employees of Bolton Tremblay Funds Inc., (C-100708)

Refund of an overpayment of contributions in the amount of \$19,081 to Bolton Tremblay Funds Inc. from The Pension Plan for Group "A" Employees of Bolton Tremblay Funds Inc., Registration No. C-100708.

Pension Benefits Guarantee Fund ("PBGF")

On December 15, 1994, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plans:

- (a) Pension Plan for Employees of Canada Decal Inc., (C-19796)**
- (b) Pension Plan for Union Employees of the Rexdale Plant of Chromalox Inc., (C-103203)**
- (c) Pension Plan for the Employees of Newman Steel Ltd., Local Union No. 8214, (C-16175)**

On December 15, 1994, the Commission, pursuant to subsection 34(7) of the Regulations, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulations. Any money not required to provide such benefits shall be returned to the PBGF.

- (a) MacLeod-Stedman Incorporated Retirement Pension Plan (C-7623) ** registered in Manitoba**
Allocate and pay from the PBGF the following interim amounts:

- (i) administration expenses of \$12,900 related to the PBGF claim for the pensioner group, and;
- (ii) a payment of \$964,987 representing the amount of deficiency in assets as of January 1, 1995.

On January 26, 1995, the Commission, pursuant to subsection 34(7) of the Regulations, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulations. Any money not required to provide such benefits shall be returned to the PBGF.

- (a) Employees' Pension Plan for Employees of the New Harding Group Inc. (C-2397)**

Allocate and pay from the PBGF the following amount:

- additional money from the PBGF an amount not to exceed \$500,000.

Orders for **Forms and Publications** are now processed by the Ministry of Finance in Oshawa. To place an order call 1-800-263-7965 (Ontario English enquiries) or 1-800-668-5821 (Ontario French enquiries).

Contacts for Enquiries

Actuarial Services	Anna Montenegro	314-0559
Annual Information Return Filing Fee	George Ha	314-0676
Communications - Publications and BBS	Judith Chalmers	314-0699
Issues & Correspondence, also FOIPOP Requests* & Media Enquiries	Doug Kaye	314-0605
General Enquiries		314-5993
Mailing List Update	Linda Stangl	314-0694
PBGF Assessment	George Ha	314-0676
Policy Issues	Susan Ellis Cynthia James Jules Huot (Bilingual)	314-0703 314-0702 314-0613
Registrar to the Commission	Sharon Carr (Acting Registrar)	314-0624

* Written FOIPOP requests should be mailed to Ron Ward, Assistant Co-ordinator, Information and Privacy Office, Ministry of Finance, 4th floor, 1075 Bay Street, Toronto ON M5S 2B1. Phone: (416) 325-8369 or Fax: (416) 325-8252.

Contacts for Plan-related Enquiries

1. Sector Allocations - (At least one plan with 250 or more members)

Sectors	Pension Officer		Alternate	
Agriculture, Mining Construction, Finance	Rosemine Jiwa-Jutha	314-0611	Mark Eagles	314-0599
Trade, Commercial, Public Administration	Mark Eagles	314-0599	Rosemine Jiwa-Jutha	314-0611
Food, Beverages, Textiles, Paper	Jaan Pringi	314-0586	Penny McIlraith	314-0594
Rubber, Plastics, Transportation Equipment	Larry Martello	314-0587	Elizabeth Addo	314-0607
Printing, Primary Metals, Machinery	Alain Malaket (bilingual)	314-0609	John Graham	314-0647
Electrical, Non-Metallic, Chemicals	John Graham	314-0647	Alain Malaket	314-0609

2. Alpha Allocations - Defined Benefit & Multi-Employer Plans (Plans with less than 250 members)

Alpha Range	Pension Officer		Alternate	
A-BRI	David Allan	314-0612	Elizabeth Carter	314-0604
BRO-COM	Steve Young (bilingual)	314-0646	Mark Henry	314-0584
CON-EZZ	Elizabeth Addo	314-0607	William Qualtrough	314-0641
F-HAZ	Mark Henry	314-0584	Steve Young	314-0646
HEA-KMZ	William Qualtrough	314-0641	Sandy Malloy	314-0636
KNA-MOQ	Elizabeth Carter	314-0604	David Allan	314-0612
MOR-PNZ	Stanley Chan	314-0635	Maureen Barber	314-0645
POL-SHE	Maureen Barber	314-0645	Stanley Chan	314-0635
SHI-TORO	Sandy Malloy	314-0636	William Qualtrough	314-0641
TORR - #*	William Qualtrough	314-0641	Sandy Malloy	314-0636

*Companies with alpha-numeric names.

3. Alpha Allocations - Defined Contribution Plans

Alpha Range	Pension Analyst		Alternate	
A-BAU	Gino Marandola (bilingual)	314-0698	John Staric	314-0596
BAV-CANADA	Marion Gassenauer	314-0690	Amin Purshottam	314-0552
CANADI-COK	Margaret Fennell	314-0600	Claude De Souza	314-0608
COL-DIL	Claude De Souza	314-0608	Margaret Fennell	314-0600
DIM-FLO	Amin Purshottam	314-0552	Marion Gassenauer	314-0690
FLU-HAL	Margaret Fennell	314-0600	Claude De Souza	314-0608
HAM-JAL	Merle Corbie	314-0637	Lynn Barron	314-0639
JAM-MIL	Debra Bain	314-0640	John Staric	314-0596
MIN-ONT	Claude De Souza	314-0608	Margaret Fennell	314-0600
ONU-RAL	Lynn Barron	314-0639	Merle Corbie	314-0637
RAM-SHA	John Staric	314-0596	Debra Bain	314-0640
SHE-THA	Merle Corbie	314-0637	Lynn Barron	314-0639
THE-VUL	Lynn Barron	314-0639	Merle Corbie	314-0637
VUM - #*	John Staric	314-0596	Debra Bain	314-0640
As Designated	Placido Mineque	314-0670		

*Companies with alpha-numeric names.

4. Alpha Allocations - Pension Plans of Insolvent Companies

Alpha Range	Co-ordinator	
A-E, T-#s*	Jai Persaud	314-0595
F-S,	Larry Falconer	314-0610

*Companies with alpha-numeric names.

Please forward undeliverable copies to:

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250 Yonge St., 29th Floor
Toronto, Ontario
M5B 2N7

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THE PENSION COMMISSION OF ONTARIO BULLETIN

Spring 1995 Supplement

PRESCRIBED FORMS AND INSTRUCTIONS

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An Introduction to Prescribed Forms and Instructions

This supplement, containing all prescribed forms including instructions and specimens of the Joint AIR and the PBGF Assessment Certificate, is being distributed along with the Spring 1995 issue of the *PCO Bulletin* to everyone on the mailing list. This publication is intended to provide pension practitioners with all prescribed forms and instructions for their information and reference.

Most of the prescribed forms have been revised or reworked recently to reduce the paperwork burden and improve efficiency and compliance rates. Because of the nature and extent of changes to Forms 1, 1.1 and 2, and because of the creation of a new prescribed form, the PBGF Assessment Certificate, a supplement seemed to be an effective way to present the new forms.

Distribution of Prescribed Forms to the Pension Industry

The supplement is intended to provide administrators with master proofs of all prescribed forms. We encourage duplication of Forms 1, 1.1, 3, 4 and the IPR by photocopier for compliance purposes. Subscribers to the BBS are aware that Forms 1, 1.1, 3, 4 and the IPR are available from PCO Conference #149. Stakeholders should note that, apart from the BBS and the *Prescribed Forms and Instructions '95* supplement, the PCO will not process requests for individual forms. Additional copies of the *Prescribed Forms and Instructions '95* supplement have been printed to meet expected demand this year. These can be obtained from the Ministry of Finance in Oshawa (please refer to phone numbers on the Contacts for PCO Enquiries page of the *PCO Bulletin*).

Joint AIR and the PBGF Assessment Certificate are Supplied to Administrators

The Joint AIR and the PBGF Assessment Certificate will be computer printed with specific plan identifying information and sent to administrators by mail shortly after the fiscal year end date of the pension plan. If more than six weeks pass following the fiscal year end date of the pension plan and administrators have not received either of these pre-printed forms, please call 416-314-0676 and a replacement form will be issued.

When the AIR and the PBGF Assessment Certificate are completed, they **must be certified, signed and delivered with the required fee on or before the deadline to the Ministry of Finance, Taxation Data Centre, PO Box 620, 33 King Street West, Oshawa, ON L1H 8E9.**

Form 1 and 1.1 Effective Dates

The new Forms 1 and 1.1 are effective on July 1, 1995. When filing on or after that date, they should be sent to the attention of the appropriate Pension Officer or Analyst at the Pension Commission of Ontario, 250 Yonge Street, 29th Floor, Toronto, ON M5B 2N7.

Penalties for Late Filings

Any AIRs and PBGF assessments, not filed by the deadline, will be subject to a filing fee of 120% of the original fee plus interest. Please refer to the *PCO Bulletin* Winter 1995 issue for articles dealing with the calculation of interest on overdue AIR and PBGF assessment payments.



Pension
Commission
of Ontario

250 Yonge Street
29th Floor
Toronto, ON M5B 2N7

Form 1 - Pension Benefits Act, 1990
Regulation 909
(Return Original with Fees - Keep Working Copy)

APPLICATION FOR REGISTRATION OF A PENSION PLAN

(All questions must be completed - please type or print)

INFORMATION CONCERNING THE PLAN ADMINISTRATOR

1. Provide the name of the administrator and the following information:

(Note: If the administrator is a corporation, pension committee or board, use the name of the corporation, committee or board)

(mailing address)

(postal code)

()

(telephone number)

(ext.)

()

(fax number)

2. Indicate whether the administrator is (check the most appropriate):

☐ an employer or employers

☐ a board of trustees

☐ a pension committee

☐ a board, agency or commission made responsible by an act of the legislature for the administration of the pension plan

☐ an insurance company

3. If the administrator is a pension committee, indicate the number of members who are representatives of:

_____ the employer or employers or any other person required to make contributions under the pension plan on behalf of an employer

_____ members of the pension plan

_____ **Total Number of Representatives**

FOR PCO USE ONLY

Registration No.: _____

Form Signed: _____

Plan Documents Not Received: _____

Additional Fee Needed: _____

Refund Issued: _____

Verified By: _____

INFORMATION CONCERNING THE EMPLOYER/PLAN SPONSOR

4. Provide the name of the employer/plan sponsor and the following information:

(name of employer/plan sponsor)

(mailing address)

(postal code)

()
(telephone number)

(ext.)

()
(fax number)

5. Are there any other employers, including subsidiary or affiliated companies, with employees participating in the plan?

☐ yes

☐ no

If "yes", attach to this form the name and mailing address of each of the other employers.

6. Employment in federal jurisdiction: (Included employment)

Are any plan members employed in an activity that is within the authority of the federal pension standards legislation (*Pension Benefits Standards Act*)? Examples of these activities include interprovincial transportation, communications, banking, and/or employment in the Yukon or Northwest Territories.

☐ yes

☐ no

INFORMATION CONCERNING THE PENSION PLAN

7. What is the name of the pension plan? _____

8. What is the effective date of the establishment of the plan? _____ / _____ / _____
yy mm dd

9. What is the date of the plan year-end? _____ / _____
mm dd

10. (a) Has this plan been registered with Revenue Canada?

☐ yes

☐ no

(b) If "yes", please provide the plan registration number: _____

11. Is the pension plan a creation of, or supported by, a collective agreement?

☐ yes

☐ no

If "yes", attach a copy of the collective agreement to this Form (as required by question 17 - documents which must be filed.)

12. Indicate the type of plan (check the most appropriate):

☐ multi-employer

_____ defined benefit

_____ defined contribution

☐ defined contribution

☐ defined benefit

☐ combination of defined benefit and defined contribution

☐ other (provide details) _____

13. Multi-employer or negotiated cost plans

Is the pension plan a multi-employer pension plan established pursuant to a collective agreement or trust agreement; or, a pension plan that provides defined benefits where the obligation of an employer to contribute to the pension plan is limited to a fixed amount or rate set out in a collective agreement? (See subsection 6(1) of Regulation 909.)

☐ yes

☐ no

14. Is the pension plan a designated plan as that term is defined in this Regulation?

☐ yes

☐ no

FUNDING INFORMATION

15. Funding instrument/arrangement

- (a) Are the benefits provided for in the plan totally insured and/or guaranteed by an insurance company?

☐ yes

☐ no

- (b) If "yes", provide the following information for the insurance company:

(name of contact)

(name of insurance company)

(mailing address)

(postal code)

()
(telephone number)

(ext.)

()
(fax number)

- (c) If 15(a) is "no", please indicate the funding instrument/arrangement (and complete question 15(d)):

☐ insurance company contract not fully insured or guaranteed

☐ trust agreement with:

☐ individual trustees

☐ trust company

☐ pension fund society

☐ government, or agency, board or commission established by statute for administration of a pension fund

☐ other (provide details) _____

(d) Provide the name of the fund, the name of the corporate trustee/insurance company/other body which holds the fund's assets, and the following information:

(fund name)

(corporate trustee/insurance company/other)

(contact name)

(mailing address)

(postal code)

()

(telephone number)

(ext.)

()

fax number)

16. Have any of the members covered by this new plan participated in the past in any other pension plan of the company, including a subsidiary or affiliated company?

☐ yes☐ no

If "yes, provide the name of the previous plan(s), the registration number(s) and describe the current status of the plan(s):

17. The following documents are required in all cases and must be filed with this form, exceptions where noted (to ensure that all required documents and fees are attached to this form, check applicable items below):

Certified copies of the documents that create and support the pension plan:

- ☐ certified copy of the text of the plan
- ☐ if not already filed, a certified copy of the initial valuation report
- ☐ certified copy of the collective agreement if the plan was set up in accordance with a labour agreement

Certified copies of the documents that create and support the pension fund:

- ☐ certified copy of the trust agreement(s)
- ☐ certified copy of the deposit contract(s) with an insurance company
- ☐ certified copy of the group annuity contract(s)
- ☐ certified copy of other types of funding instruments
- ☐ certified copy of the statement of investment policies and goals
- ☐ a certified copy of any reciprocal transfer agreement related to the pension plan, if applicable
- ☐ a certified copy of the explanatory statement and other information provided to members and persons eligible to become members as required under subsection 25(1) of the Act (information provided by administrator)
- ☐ fees schedule with cheque payable to the **Minister of Finance** and computed in accordance with the completed fees schedule at question 19

18. The following documents are required if applicable to the plan (to ensure that all applicable documents and information are attached please check items below; if items are not applicable, indicate [N/A]):

- _____ a list of the names and addresses of each member of a pension committee, a board of trustees or a board, agency or commission responsible for the administration of the **pension plan**
- _____ a list of the names and addresses of each individual trustee or each member of a board, agency, commission or corporation responsible for the administration of a **pension fund**, if not included in certified copy of funding instrument
- _____ a list of the other pension plans already set up by the employer
- _____ a list of the names and addresses of each employer participating in this plan as per question 5
- _____ a list of the name and registration number of each previous pension plan of the employer(s) as per question 16
- _____ other (provide details) _____

PLAN MEMBERSHIP AND REGISTRATION FEES SCHEDULE

19. Enter below the number of members, excluding former members, and the location of their employment by jurisdiction as of the effective date of the establishment of the plan.

<u>Location of Employment:</u>	<u>Male</u>	<u>Female</u>	<u>Total</u>
Newfoundland			
Nova Scotia			
New Brunswick			
Quebec			
Ontario			
Manitoba			
Saskatchewan			
Alberta			
British Columbia			
Northwest Territories			
Yukon Territory			
SUBTOTAL	<div><div></div><div>(subtotal male)</div></div>	<div><div></div><div>(subtotal female)</div></div>	<div><div></div><div>(subtotal - all members)</div></div>
Prince Edward Island			
Outside Canada			
TOTALS			

REGISTRATION FEES: Fee payment must be the amount shown in (A) multiplied by \$6.15, with a minimum payment of \$200.00, and a maximum payment of \$50,000.00.

\$6.15 per member x (A)

\$

Fees Payable:

(Minimum \$200)
(Maximum \$50,000)

\$

Registration Fees enclosed:

\$

Please make cheque payable to the Minister of Finance and send the application, required documents and fees to:

Pension Commission of Ontario, 250 Yonge Street, 29th Floor, Toronto, ON M5B 2N7

STATISTICAL INFORMATION RELATED TO PENSIONS AND PENSION PLANS

The information requested in questions 20 to 29 is to be provided for the purpose of compiling statistical information related to pensions and pension plans pursuant to section 97 of the PBA.

20. Type of organization operated by the principal employer(s) (check the most appropriate):

- ☐ a sole proprietorship/ partnership
- ☐ a corporation
- ☐ a registered not-for-profit association
- ☐ a municipal government, agency, or corporation
- ☐ a provincial government, agency, or corporation
- ☐ federal government, agency, or corporation
- ☐ other (provide details) _____

21. What is the main business of the principal employer/ plan sponsor? _____

22. Eligibility for membership

Specify the class or classes of employees who are eligible to join the plan (multiple entries acceptable except for "all employees"):

- ☐ all employees
- ☐ salaried employees
- ☐ hourly employees
- ☐ union members
- ☐ executives including "connected persons" as that term is defined in the *Income Tax Act* (Canada)
- ☐ other (provide details) _____

23. Normal retirement age

Indicate normal retirement age according to the plan text: _____

24. Integration with Canada Pension Plan (CPP) or Quebec Pension Plan (QPP)

Indicate if the contribution and/or benefit rate are integrated with contributions or benefits of the CPP/QPP:

- ☐ contribution rate integrated with CPP/QPP
- ☐ benefit formula integrated with CPP/QPP
- ☐ both are integrated with CPP/QPP
- ☐ neither is integrated with CPP/QPP

25. Employee contributions

Identify employee contribution rate for normal cost:

- ☐ no employee contribution required
- ☐ _____ % of earnings if not integrated with CPP/QPP
- ☐ _____ % of earnings above Year’s Maximum Pensionable Earnings (YMPE)
- ☐ _____ % of earnings up to YMPE
- ☐ other (provide details) _____

26. Employer contributions

Identify employer contribution rate or amount for normal cost:

- ☐ employer pays balance of cost
- ☐ _____ % of earnings if not integrated with CPP/QPP
- ☐ _____ % of earnings above YMPE
- ☐ _____ % of earnings up to YMPE
- ☐ \$ _____ per year
- ☐ other (provide details) _____

Plans Which Have Any Defined Benefit Provisions, Complete Questions 27 to 29

27. Benefit calculation

Pension benefits are based on (*check the most appropriate*):

- ☐ final average earnings over the last _____ years
- ☐ best average earnings for the best _____ years (*of the last _____ years, if applicable*)
- ☐ career average earnings
- ☐ flat benefit

28. Benefit formula - for normal retirement benefit only (do not include optional or alternative benefits requiring specific conditions)

Indicate amount or rate of benefit formula:

- ☐ _____ % of earnings if not integrated with CPP/QPP
- ☐ _____ % of earnings above YMPE
- ☐ _____ % of earnings up to YMPE
- ☐ \$ _____ per month for each year of service
- ☐ \$ _____ per month for each _____ hour(s) worked
- ☐ other (*provide details*) _____
- _____
- _____
- _____

29. Does the pension plan document provide for automatic (contractual) increases to pensions in pay, or deferred pensions (e.g. indexation to Consumer Price Index)?

- ☐ yes
- ☐ no
-

DECLARATION BY ADMINISTRATOR

I, _____, hereby apply for registration of the Pension Plan identified in this Form in accordance with the Act and the Regulations. I make the application in my capacity as (*circle the appropriate description:*) the administrator / duly authorized signing officer of the administrator of _____ (the "Pension Plan").

(Name of the pension plan)

Attached are certified copies of the documents that create and support the Pension Plan and the pension fund as well as any other documents required to be filed under the Act and the Regulations.

I DECLARE THAT:

1. The documents filed with this Form include certified copies of the documents that create and support the Pension Plan and the pension fund and those documents, as well as all other documents filed with this application, comply with the Act and the Regulations;
2. I understand that the obligation to ensure that the documents filed with this Form comply with the Act and the Regulations is the responsibility of the administrator, and I declare that I have fulfilled that obligation and have complied with the provisions of the Act and the Regulations in making this application for registration; and
3. I acknowledge that this declaration extends to compliance with the pension legislation of any designated jurisdiction within Canada, other than Ontario, where the legislation of a designated jurisdiction applies to members and former members of the pension plan.

I declare that I am aware of my obligations under the Act as administrator of the Pension Plan and that the contents of this form and the documents filed with this form, and my declarations are true to the best of my knowledge and belief.

DATED at the City of _____, this _____ day of _____, 199__.

_____ <i>Signature of Witness</i>	_____ <i>Signature of administrator or authorized signing officer</i>
_____ <i>Name of Witness (printed)</i>	_____ <i>Name of administrator or authorized signing officer (printed)</i>
_____ _____ <i>Address of Witness</i>	_____ <i>Title/Position</i>



Pension
Commission
of Ontario

250 Yonge Street
29th Floor
Toronto, ON M5B 2N7

*Form 1.1- Pension Benefits Act, 1990
Regulation 909*

APPLICATION FOR REGISTRATION OF A PENSION PLAN AMENDMENT
(All applicable questions must be completed - please type or print)

INFORMATION ABOUT THIS APPLICATION

1. Plan registration number: _____
2. Name of pension plan: _____

3. Name of employer or plan sponsor: _____

4. The effective date of the amendment is: _____ / _____ / _____
yy mm dd
5. Amendment number(s) (if multiple amendments are submitted): _____

6. Indicate whether the application involves an amendment(s) concerning:
- ☐ transfer of assets
 - ☐ merger of plans
 - ☐ refund of contributions
 - ☐ distribution of surplus
 - ☐ plan conversion
 - ☐ reduction of accrued benefits or refund of contributions under Section 47 of Regulation 909
 - ☐ early retirement / downsizing program
 - ☐ full wind up of the pension plan *(complete questions 1 to 6, 11, and 21 to 22 only)*
 - ☐ partial wind up of the pension plan
 - ☐ other *(provide details)* _____
- _____

AMENDMENTS CONCERNING BENEFITS OR CONTRIBUTIONS

7. Indicate whether the application involves any of the following *(please answer each question)*:
- | Yes | No | |
|-----------------------|-----------------------|--|
| <input type="radio"/> | <input type="radio"/> | eligibility for membership if "yes", complete question 12 |
| <input type="radio"/> | <input type="radio"/> | normal retirement age if "yes", complete question 13 |
| <input type="radio"/> | <input type="radio"/> | integration with the Canada Pension Plan (CPP) or
Quebec Pension Plan (QPP) if "yes", complete question 14 |
| <input type="radio"/> | <input type="radio"/> | employee contributions rate if "yes", complete question 15 |
| <input type="radio"/> | <input type="radio"/> | employer contributions if "yes", complete question 16 |
| <input type="radio"/> | <input type="radio"/> | benefit calculation / formula: for plans
providing defined benefits if "yes", complete questions 17, 19 |
| <input type="radio"/> | <input type="radio"/> | benefit calculation / formula:
career average earnings if "yes", complete question 18 |
| <input type="radio"/> | <input type="radio"/> | the provision of automatic (contractual) increases to
pensions in pay or deferred pensions if "yes", complete question 20 |
| <input type="radio"/> | <input type="radio"/> | ad hoc increases to pensions in pay or deferred pensions if "yes", complete question 8 |
| <input type="radio"/> | <input type="radio"/> | funding instrument if "yes", complete question 9 |

If the answer to each of the items listed above is "no", go directly to page 8 and complete the declaration.

STATISTICAL INFORMATION CONCERNING PENSIONS AND PENSION PLANS

The information requested in questions 8 to 22 is to be provided for the purpose of compiling statistical information related to pensions and pension plans pursuant to section 97 of the PBA.

8. (a) Does this application involve an amendment to provide ad hoc increases to pensions in pay or deferred pensions? (if "yes", answer (b) and (c) below; if "no", go to question 9)

☐ yes

☐ no

- (b) How are these increases to be made?

☐ ad hoc increase pursuant to a collective agreement and plan amendment

☐ ad hoc increase made voluntarily by the employer or plan sponsor in accordance with a plan amendment

☐ other (provide details) _____

- (c) What was the effective date of the increase? ____/____/____
yy mm dd

9. Funding instrument/arrangement

- (a) Are the benefits provided for in the plan totally insured and/or guaranteed by an insurance company?

☐ yes

☐ no

- (b) If 9(a) is "no", please indicate the funding instrument/arrangement:

☐ insurance company contract not fully insured or guaranteed

☐ trust agreement with:

☐ individual trustees

☐ trust company

☐ pension fund society

☐ government, or agency, board or commission established by statute for administration of a pension fund

☐ other (provide details) _____

10. Indicate the type of plan (*in cases where this amendment changes the type of plan, indicate the new plan type*):

☐ multi-employer

_____ defined benefit

_____ defined contribution

☐ defined contribution

☐ defined benefit

☐ combination of defined benefit and defined contribution

☐ other (*provide details*) _____

11. Multi-employer or negotiated cost plans

Is the pension plan a multi-employer pension plan established pursuant to a collective agreement or trust agreement; or, a pension plan that provides defined benefits where the obligation of an employer to contribute to the pension plan is limited to a fixed amount or rate set out in a collective agreement? (*See subsection 6(1) of Regulation 909.*)

☐ yes

☐ no

Information Concerning Benefits or Contributions

12. Eligibility for membership

Specify the class or classes of employees who are eligible to join the plan (*multiple entries acceptable except for "all employees"*):

☐ all employees

☐ salaried employees

☐ hourly employees

☐ union members

☐ executives including "connected persons" as that term is defined in the *Income Tax Act* (Canada)

☐ other (*provide details*) _____

13. Normal retirement age

Indicate normal retirement age according to the plan text: _____

14. Integration with Canada Pension Plan (CPP) or Quebec Pension Plan (QPP)

Indicate if the contribution and/or benefit rate are integrated with contributions or benefits of the CPP/QPP:

- ☐ contribution rate integrated with CPP/QPP
- ☐ benefit formula integrated with CPP/QPP
- ☐ both are integrated with CPP/QPP
- ☐ neither is integrated with CPP/QPP

15. Employee contributions

Identify employee contribution rate for normal cost:

- ☐ no employee contribution required
- ☐ _____ % of earnings if not integrated with CPP/QPP
- ☐ _____ % of earnings above Year's Maximum Pensionable Earnings (YMPE)
- ☐ _____ % of earnings up to YMPE
- ☐ other (provide details) _____

16. Employer contributions

Identify employer contribution rate or amount for normal cost:

- ☐ employer pays balance of cost
- ☐ _____ % of earnings if not integrated with CPP/QPP
- ☐ _____ % of earnings above YMPE
- ☐ _____ % of earnings up to YMPE
- ☐ \$ _____ per year
- ☐ other (provide details) _____

Pension Plans Which Have Any Defined Benefit Provisions, Complete Questions 17 to 20

17. Benefit calculation

Are pension benefits per year of service based on *(check the most appropriate)*:

- ☐ final average earnings over the last _____ years
- ☐ best average earnings for the best _____ years *(of the last _____ years, if applicable)*
- ☐ career average earnings
- ☐ flat benefit

18. (a) If the benefit calculation is based on career average earnings, are career earnings or benefits updated, for example, in accordance with a price or wage index?

- ☐ yes
- ☐ no

(b) If the benefit calculation is updated, are all earnings included or only those after a specified date?

- ☐ yes *(all earnings included)*
- ☐ no *(only earnings after _____ / _____ / _____)*

yy

mm

dd

19. Benefit formula - for normal retirement benefit only (do not include optional or alternative benefits requiring specific conditions)

Indicate amount or rate of benefit formula per year of service:

- ☐ _____ % of earnings if not integrated with CPP/QPP
- ☐ _____ % of earnings above YMPE
- ☐ _____ % of earnings up to YMPE
- ☐ \$ _____ per month for each year of service
- ☐ \$ _____ per month for each _____ hour(s) worked
- ☐ other *(provide details)* _____

20. Does this application involve an amendment to provide for automatic (contractual) increases to pensions in pay or deferred pensions (e.g. indexation to CPI)?

☐ yes

☐ no

PLAN WIND UP IN FULL

21. (a) Does this application involve the full wind up of the pension plan?

☐ yes

☐ no

If "yes", what is the effective date of plan wind up? ____/____/____
yy mm dd

- (b) What is the major reason for the wind up of the pension plan?

☐ merged with/replaced by another pension plan _____
plan registration number

☐ company dissolved or plant closed

☐ no members remaining

☐ financial considerations

☐ other (provide details) _____

22. If the plan is being wound up and not replaced with another pension plan, indicate whether either of the following arrangements will be offered by the employer:

☐ a Registered Retirement Savings Plan (RRSP)

☐ a Deferred Profit Sharing Plan (DPSP)

☐ both an RRSP and a DPSP

☐ neither an RRSP nor a DPSP

DECLARATION BY ADMINISTRATOR

I, _____, hereby apply for registration of the pension plan amendment(s) identified in this Form in accordance with the Act and the Regulations. I make the application in my capacity as (*circle the appropriate description:*) the administrator/ duly authorized signing officer of the administrator of

_____ (the "Pension Plan"),
(name of the pension plan)

registration number _____.

Attached is a certified copy of the amending document as well as any other document required to be filed under the Act and the Regulations.

I DECLARE THAT:

- 1. The documents filed with this Form include a certified copy of the amending document(s) and that/ those documents, as well as all other documents filed with this application, comply with the provisions of the Act and the Regulations;
- 2. I understand that the obligation to ensure that the documents filed with this Form comply with the Act and the Regulations is the responsibility of the administrator, and I declare that I have fulfilled that obligation and have complied with the provisions of the Act and the Regulations in making this application for registration; and,
- 3. I acknowledge that this declaration extends to compliance with the pension legislation of any designated jurisdiction within Canada, other than Ontario, where the legislation of a designated jurisdiction applies to members and former members of the pension plan.

I declare that I am aware of my obligations under the Act as administrator of the Pension Plan and that the contents of this form and the documents filed with this form, and my declarations are true to the best of my knowledge and belief.

DATED at the City of _____, this _____ day of _____, 199____.

_____ <i>Signature of Witness</i>	_____ <i>Signature of administrator or authorized signing officer</i>
_____ <i>Name of Witness (printed)</i>	_____ <i>Name of administrator or authorized signing officer (printed)</i>
_____	_____ <i>Title/Position</i>

_____ <i>Address of Witness</i>	



Pension
Commission
of Ontario



Revenu
Canada

Revenue
Canada

INTRODUCTION OF JOINT ANNUAL INFORMATION RETURN TO ADMINISTRATORS OF ALL ONTARIO-REGISTERED PENSION PLANS

The Pension Commission of Ontario and Revenue Canada have developed a joint Annual Information Return (AIR) in order to eliminate duplication and reduce the cost of completing separate annual returns.

The joint AIR is required to be completed and returned to the Ministry of Finance, Taxation Data Centre, P.O. Box 620, 33 King Street West, Oshawa, Ontario, L1H 8E9 on or before the due date established under the *Pension Benefits Act*, R.S.O. 1990 and Regulations. Revenue Canada's filing deadlines now correspond to those of the Pension Commission of Ontario.

Please ensure that for all plan types the AIR form is completed and signed by the plan administrator and that a cheque for the applicable fees is made payable to the "Minister of Finance of Ontario".

In addition, for defined benefit plans, please file a Pension Benefits Guarantee Fund Assessment Certificate to be signed by the plan actuary and the plan administrator. A separate cheque to cover the PBGF assessment, including the retail sales tax, should be made payable to the "Pension Benefits Guarantee Fund".

Your cooperation in filing the completed form(s) within the time limits specified is appreciated.

Toutes les formules et instructions sont disponibles en français.



Annual Information Return
To be completed by the Pension Plan Administrator.
Pension Benefits Act, R.S.O. 1990, c.P.8 (PBA)



Please review all the information shown below. If any information is incorrect or incomplete, please make the appropriate corrections.

Return form to: Ministry of Finance
Taxation Data Centre
PO Box 620
33 King Street West
Oshawa ON L1H 8E9

1 Registration Number **2 Name of Pension Plan**

--	--

3 Plan Type

- ☐ Defined Benefit ☐ Defined Contribution ☐ Multi-employer
- ☐ Other (specify) _____

4 Plan Reporting Period

year	month	day
to		
year	month	day

5 Plan Administrator - Name and Mailing Address

Contact					
Title					
Company Name					
Address					
City		Province/State		Postal/Zip Code	
Telephone	(Area Code)	Extension	FAX	(Area Code)	

6 Employer/Plan Sponsor - Name and Address

Name					
Address					
City		Province/State		Postal/Zip Code	
Telephone	(Area Code)	Extension	FAX	(Area Code)	

7 Organization Holding Pension Fund Assets - Name and Address

Name					
Address					
City		Province		Postal Code	
Telephone	(Area Code)	Extension	FAX	(Area Code)	

8 Location of books or records maintained by the plan administrator, or - same as plan administrator's address ☐

Address		
City	Province/State	Postal/Zip Code

9 Name of collective bargaining agent representing the largest number of members of the pension plan, or - not applicable ☐

--

10 Funding Information for the Reporting Period

Required Contributions based on the most recently filed Cost Certificate:

Employer normal cost contributions

1

\$

Plus: Employer special payments

+ 2

Less: Reduction of employer required contributions

- 3

Employer required contributions

= 4

Member required contributions

5

Contributions made in respect of the reporting period:

Employer contributions

6

Member contributions

7

Member additional voluntary contributions

8

11 Membership Information at the end of the Reporting Period

Indicate number of plan members by Province/Territory:

Male

Female

Designated Provinces/Territories:

Newfoundland

Nova Scotia

New Brunswick

Quebec

Ontario

Manitoba

Saskatchewan

Alberta

British Columbia

Northwest Territories

Yukon Territory

Subtotal

9a

9b

Total Number of Plan Members in Designated Provinces/Territories

(add 9a and 9b)

10

Transfer this figure to 11

Prince Edward Island

Outside Canada

12 Annual Information Return Filing Fee Calculation

Total Plan Members (from 10) 11

X \$6.15

= 12

\$

Annual Filing Fee Payable:

Fee payment must be the number shown in 11 multiplied by \$6.15, with a minimum payment of \$200.00, and a maximum payment of \$50,000.00.

13

\$

Please make the cheque payable to 'Minister of Finance of Ontario'.

13 Confirmation of Compliance

Plan administrators are required to review the Statement of Investment Policies and Goals (SIP&G) at least once each year in order to confirm or amend it.

Have you reviewed the SIP&G since the last Annual Information Return was filed?

☐ Yes ☐ No If yes, enter the date the SIP&G was last reviewed:

year	month	day

Have you amended the SIP&G since the last Annual Information Return was filed?

☐ Yes ☐ No If yes, enter the date the last amendment was filed with the PCO:

year	month	day

Have the pension plan and fund been administered in compliance with the *Pension Benefits Act*, R.S.O. 1990, c.P.8 and Regulation 909, R.R.O. 1990 (as amended) for the reporting period covered by this form?

☐ Yes ☐ No If no, please attach an explanation.

14 Certification

As the authorized representative of the Administrator of the above noted pension plan, I certify that all the information presented on this form is true to the best of my knowledge and belief.

DATED at _____, this _____ day of _____, 19____

Signature of Witness

Signature of Authorized Representative

Name of Witness (please print)

Name of Authorized Representative (please print)

Address of Witness

Title/Position (please print)

PI0511

Page 3 of 4



Pension
Commission
of Ontario

Please do not detach

Remittance Advice Annual Information Return

Enter the payment amount in the space provided. Please return the completed Annual Information Return with the required fee to: Ministry of Finance, Taxation Data Centre, PO Box 620, 33 King Street West, Oshawa ON L1H 8E9.

Due Date	
Payment Enclosed	\$

Plan Reporting Period

year	month	day	to	year	month	day



Revenue
Canada

Revenue Canada - Schedule A

Registration Number

Name of Pension Plan

Revenue Canada Information

15 Amounts transferred in from other plans

\$	

16 Payment of benefits from the plan

17 Transfers of benefits to other plans

18 Market value of assets at beginning of reporting period

19 Market value of assets at end of reporting period

20 Net investment earnings (losses)

21 Did the pension plan terminate or become inactive prior to or in this reporting period?

No ☐ Yes ☐

If Yes, enter
Date of Termination

year	month	day

If all the assets were distributed pursuant to the termination of the plan, enter the date of final distribution. No further questions

Date of Final Distribution

year	month	day

22 How many active members were persons connected with the employer?

20	
21	

23 How many employers participated in the plan at the end of the reporting period?

NOTE:

- multi-employer plan, proceed to section 28.
- specified multi-employer plan, no further questions.
- All other plan types continue with section 24.

24 Did any member of this plan participate in any other registered pension plan or deferred profit sharing plan provided by this plan sponsor?

No ☐ Yes ☐

25 Did any member of this plan participate in any other registered pension plan or deferred profit sharing plan of any other sponsor who does not deal at arm's length with this plan sponsor?

☐ ☐

26 Have any connected persons joined or left the plan in this reporting period?

☐ ☐

27 During this reporting period, has a person or group acquired control of the corporation that is sponsoring the pension plan?

N/A ☐ ☐ ☐

- NOTE:**
- defined contribution plan, no further questions.
 - All other plan types continue with section 28.

28 Were any plan members provided with post-1989 past service benefits in this reporting period?

No ☐ Yes ☐

29 Have any plan members who are connected persons been provided with pre-1992 past service benefits in this reporting period?

☐ ☐



INSTRUCTIONS FOR COMPLETING THE ANNUAL INFORMATION RETURN

The Annual Information Return (AIR) is required to be filed pursuant to the *Income Tax Act* (Canada) (the "ITA") and the *Pension Benefits Act* (Ontario) (the "PBA"). The information on Schedule A is collected solely under the authority of the ITA and will not form part of the Pension Commission of Ontario's (the "PCO") plan file. The information on the Pension Benefits Guarantee Fund Assessment Certificate (the "Certificate") is collected solely under the authority of the PBA.

Administrators or their agents must complete all relevant sections of the AIR, Schedule A and the Certificate (if applicable) accurately and file them within the prescribed timelines. Late filings are subject to financial penalties under ss. 162(7) of the ITA and ss. 18(5) of PBA Regulation 909, as amended (the "Regulations"). In addition, registration of the plan may be revoked under ss. 147.1(12) and (13) of the ITA if the AIR is filed late.

The numbering of the sections in these instructions corresponds to the numbers on the AIR. Please follow these instructions carefully to avoid having inaccurate or incomplete forms returned.

1. Registration Number

As of March 31, 1995, Ontario registered plans no longer have separate provincial registration numbers. These plans will be identified by their Revenue Canada seven digit registration numbers only. *If the registration number preprinted in section 1 is incorrect, please contact the PCO at 416-314-0676 and a corrected form will be issued.*

For sections 2 to 7, carefully review the preprinted information and if corrections are required, please cross out the information and insert the corrections.

2. Name of Pension Plan

This section shows the name of the pension plan as it appears in our records.

3. Plan Type

The plan must be one of the four basic types as described below:

• Defined Benefit Plan (DB)

A member's pension benefits are based on a pre-determined formula.

• Defined Contribution Plan (DC)

A specified amount of money, defined under the terms of the pension plan, is contributed on behalf of each member of the pension plan at regular intervals. A member's pension benefit is determined by the amount of the contributions plus investment earnings (or minus losses) in the member's account and the annuity rates in effect at the time of the member's retirement.

• Multi-employer Pension Plan (MEPP)

Such plans may be either DB or DC and are established for the employees of two or more employers as a result of an agreement, statute or municipal bylaw. This does not include pension plans where all employers are affiliated within the meaning of the *Business Corporations Act*. This includes Specified Multi-employer Pension Plans (SMPPs), as defined in s. 8510 of the Income Tax Regulations, which are multi-employer contribution rates are negotiated under a collective bargaining agreement based on hours worked by an employee. Section 8510 of the Income Tax Regulations contains definition of SMPPs.

• Other Plans

Elements of DB and DC plans may be combined to produce a "combination" pension plan. This can include a single plan covering two classes of employees, with one class receiving a DB benefit and the other receiving a DC benefit. It can also include a plan which provides a DC benefit for current service but provides a DB past service benefit for certain members. However, it would not include DB plans which permit additional voluntary contributions.

4. Plan Reporting Period

These dates are preprinted and correspond to the plan year as set out in the pension plan documents. If they are not correct, please insert the correct dates and attach a note indicating when the appropriate plan amendment was filed.

5. Plan Administrator

This is the person or other prescribed body legally responsible for administering the plan.

6. **Employer/Plan Sponsor**

his is the body which, according to our records, established and continues the plan.

7. **Organization Holding Pension Fund Assets**

This is the insurance company, trust company or other body holding the pension fund assets. Section 54 of the Regulations provides a list of bodies which may administer a pension fund.

8. **Location of Books/Records**

If the records of the pension plan are not maintained at the address shown in section 5, please provide the address where they are maintained.

9. **Name of Collective Bargaining Agent**

Provide the name of the appropriate trade union.

10. **Funding Information for the Reporting Period**

Provide detailed information concerning contributions required and made to the pension fund in respect of the reporting period referenced in section 4 of this form. *Information for boxes 1, 2 and 3 must be based on the cost certificate(s) most recently filed with the PCO, as applicable.*

Box 1 Employer normal cost contributions are the employer portion of the cost of pension and ancillary benefits accrued during the reporting period.

Box 2 Employer special payments may be required in defined benefit plans as well as in certain combination plans and include special payments made in respect of the reporting period to cover any unfunded liabilities, experience deficiencies (as defined under PBA Regulation 746 as it existed on December 31st, 1987) or solvency deficiencies. If a cost certificate covering an earlier period or periods was filed during the current reporting period, and if additional payments due in respect of the preceding period(s) were identified in the cost certificate, please also include those payments in this box.

Box 3 Reduction of employer required contributions includes actuarial gains applied to reduce employer

contributions for normal cost, forfeitures of non-vested employer contributions, as well as the prior year credit balance available at the beginning of the reporting period.

Box 4 Employer required contributions are calculated by adding the employer normal cost contributions (box 1) to the special payments (box 2) and subtracting from that sum any applicable reduction (box 3).

Box 5 Member required contributions are the contributions, if any, required to be made by the plan members in respect of the reporting period, based on the most recently filed cost certificate(s).

Box 6 Employer contributions are the amount of actual required contributions made in respect of the reporting period by the employer. This amount is determined from the actual employer contributions made during the reporting period, adjusted for any in-transit amounts at the beginning and end of the reporting period.

Box 7 Member contributions are the amount of actual required contributions made by the members in respect of the reporting period. This amount is determined from the actual member contributions made during the reporting period adjusted for any in-transit amounts at the beginning and end of the reporting period. Do not include additional voluntary contributions.

Box 8 Member additional voluntary contributions are any additional amounts voluntarily contributed by the members in respect of the reporting period.

11. **Membership Information at the End of the Reporting Period**

Please indicate the number of plan members in the appropriate box. Do not include former members(deferred vested members, retirees or other persons entitled to benefits under the plan). Active members employed in Prince Edward Island or outside Canada should not be included in the total in box 10. This information is being

collected on behalf of Revenue Canada, as well as for statistical purposes.

12. Annual Information Return Filing Fee Calculation

The plan administrator is required to remit an annual filing fee to the Minister of Finance of Ontario pursuant to ss. 18(3) of the Regulations. Transfer the information from box 10 to box 11 to calculate this fee.

- Multiply the number of members in box 11 by \$6.15 and enter this amount in box 12. If the amount in box 12 is **at least \$200.00 but less than \$50,000.00**, enter the amount from box 12 in box 13.
- If the amount in box 12 is **less than \$200.00**, the annual filing fee payable is \$200.00. Enter this amount in box 13.
- If the amount in box 12 is **greater than \$50,000.00**, the annual filing fee payable is \$50,000.00. Enter this amount in box 13.

Please make the cheque payable to: "Minister of Finance of Ontario" and return with the completed AIR.

13. Confirmation of Compliance with the PBA

Please confirm that the plan is being administered in accordance with the requirements of the PBA and the Regulations. If there has been non-compliance, please indicate and attach a brief explanation of the non-compliance.

14. Certification

The certification should be completed and signed after all sections of the AIR and Schedule A have been completed. The certification may only be signed by:

- the Administrator, or where the Administrator is a corporate entity or a pension committee, by an authorized representative of the corporation or committee; or
- a designated representative of the Board of Trustees, where the pension plan is administered by a Board of Trustees.

Please have the administrator's signature witnessed in the space provided.

Questions relating to the above should be directed to the PCO, Pension Plans Branch at (416) 314-0672.

REVENUE CANADA - SCHEDULE A

The numbers below correspond to the numbers on the Schedule A.

15. Amounts Transferred In From Other Plans

Total actual amounts transferred into the pension fund from other RPPs, DPSPs and RRSPs.

16. Payment of Benefits From the Plan

Total amount of benefits paid to beneficiaries.

17. Transfers of Benefits to Other Plans

Total actual amount of all transfers to other plans including RPPs, RRSPs, LIRAs, LIFs and RRIFs.

21. Did the pension plan terminate or become inactive prior to or in this reporting period?

A plan terminates when contributions have ceased and members have ceased to accrue benefits. An inactive plan is one which has terminated but the total plan funds have not been disbursed.

22. How many active members were persons connected with the employer?

An *active member* is an employee who accrues benefits in a defined benefit plan, or who makes contributions or on whose behalf the employer makes contributions to a defined contribution plan. According to the Income Tax Regulations a *connected person* is generally one who:

- owns directly or indirectly, 10% or more of the issued shares of any class of the capital stock of the employer or a related corporation;
- does not deal at arm's length with the employer; or
- is a specified shareholder of the employer by reason of ss. 248(1) of the ITA.

For a complete definition, please see ss. 8500(3) of the Income Tax Regulations.

After section 23, Multi-employer Plans proceed to section 28 and Specified Multi-employer Plans need not continue. Other plans continue with section 24.

27. During the reporting period, has a person or group acquired control of the corporation that is sponsoring the pension plan?

If the plan sponsor is a corporation, indicate if the corporation underwent a change of control during the plan year. If the sponsor is not a corporation, check the box for "Not Applicable".

Questions relating to sections 15 to 29 inclusive should be directed to Revenue Canada at Registered Plans Division, General Enquiries Services at (613) 954-0419.

GENERAL INFORMATION

Filing Deadlines for Completed Forms

Completed forms for defined contribution plans must be filed not later than 6 months after the end of the plan reporting period. For all other plans, the forms must be filed not later than 9 months after the end of the plan reporting period.

Where to send the completed Annual Information Return, Schedule and Pension Benefits Guarantee Fund Assessment Certificate

Please use the enclosed envelope to send the following documents to the Ministry of Finance, Taxation Data Centre, P.O. Box 620, 33 King Street West, Oshawa, Ontario, L1H 8E9:

- the completed and signed Annual Information Return;
- Schedule A to the Annual Information Return;
- a cheque payable to the "Minister of Finance of Ontario" for the annual filing fee;
- the completed and signed Pension Benefits Guarantee Fund Assessment Certificate (if applicable); and,
- a **separate** cheque payable to the "Pension Benefits Guarantee Fund" for the annual PBGF assessment (if applicable).

A separate guide is provided to those Administrators required to complete the PBGF Assessment Certificate.

Ces instructions sont disponibles en français



Pension Benefits Guarantee Fund Assessment Certificate

Pension Benefits Act, R.S.O. 1990, c.P.8 (PBA)

Please see the instructions for completing this form.

Return form to: Ministry of Finance
Taxation Data Centre
PO Box 620
33 King Street West
Oshawa ON L1H 8E9

PART 1

1 Registration Number 2 Name of Pension Plan

--

--

3 Name of Employer / Plan Sponsor

--

4 Plan Year End

year	month	day

6 Valuation Date of Last Actuarial Report
filed with the Commission

year	month	day

7 Period Covered by the Actuarial
Report from:

year	month	day

to

5 Assessment Date

year	month	day

year	month	day

PART 2 - To be completed by the Actuary

Please complete the following based upon the last actuarial report filed with the Commission. All respondents must complete [201] and [202].

NOTE: If the Pension Benefits Guarantee Fund (PBGF) assessment base is zero, skip [203] to [208] inclusive and enter zero in [209].

Going concern assets

[201] \$

Going concern liabilities

[202]

Solvency assets

[203]

PBGF liabilities

[204]

Solvency liabilities of the pension plan

[205]

Solvency liabilities respecting employment in Ontario

[206]

Ontario asset ratio - ([204] or, if applicable, [206] divided by [205])

[207]

Ontario portion of fund - ([203] multiplied by the ratio in [207])

[208]

PBGF assessment base - ([204] subtract [208]; if negative, enter zero)

[209]

Amount of additional liability for plant closure and/or permanent layoff benefits which is not funded and subject to the 2% assessment pursuant to s.37(4)(a)(ii) of the Regulations

[210]

PART 3 - Declaration of the Actuary

I certify that I have knowledge of the above noted pension plan and that to the best of my knowledge and belief the information reported in PART 2 of this form is true.

DATED at _____, this _____ day of _____, 19 _____

Signature of Witness _____ Signature of Actuary _____

Name of Witness (please PRINT) _____ Name of Actuary (please print) _____

Address of Witness _____ Professional Designation (please print) _____

_____ Corporate Affiliation _____

PART 4 - To be completed by the Pension Plan Administrator

A Recalculation of Pension Benefits Guarantee Fund Assessment Base

Has the employer made special payments between the valuation date of the last actuarial report filed and the assessment date, in excess of the minimum special payments required in accordance with that report?

☐ Yes (Please complete the following) ☐ No (Enter amount from 209 into 212)

Periods covered between the Valuation Date of the Last Actuarial Report and the Assessment Date	Minimum Special Payments required based on the Last Actuarial Report		Special Payments Made by the Employer
	Going Concern Unfunded Liability	Solvency Deficiency	
First Year (or part thereof) covering the period from: year month day to year month day	\$		
Second Year (or part thereof) covering the period from: year month day to year month day			
Third Year (or part thereof) covering the period from: year month day to year month day			
Total For All Periods	A	B	C

Amount in excess of the minimum special payments.
(Amount C minus the sum of A plus B) 211 \$

PBGF assessment base as recalculated (209 minus 211 ; if negative, enter zero) 212

PART 4 (continued)**B Calculation of Guarantee Fund Assessment** Note: If amount in **212** is zero, proceed to **217**.0.5% of any portion of the applicable PBGF assessment base **212** that is less than 10% of the PBGF liabilities **204****213** \$1.0% of any portion of the applicable PBGF assessment base **212** that is 10% or more but less than 20% of the PBGF liabilities **204****214**1.5% of any portion of the applicable PBGF assessment base **212** that is 20% or more of the PBGF liabilities **204****215**Sum of amounts **213** + **214** + **215****216**

Number of Ontario Plan Beneficiaries as at the plan year end (see instructions):

Members

217

Other Beneficiaries:

218Total of **217** + **218****219**

X \$1.00 =

220 \$Sum of amounts **216** + **220****221**

Number of Ontario Plan Beneficiaries

from **219**

X \$100.00 =

222Lesser of **221** or **222****223**2.0% of **210****224**Total Guarantee Fund Assessment (Sum of amounts **223** + **224**, maximum \$4,000,000)**225**Retail Sales Tax (8% of **225**)**226**Total Amount to be Remitted (Sum of amounts **225** + **226**)**227**

Please remit cheque payable to: 'Pension Benefits Guarantee Fund'

If the Total Guarantee Fund Assessment is \$25 or less the employer is not required to pay the assessment. However, the certificate must still be filed.

PART 5 - Certification

As the authorized representative of the administrator of the above noted pension plan, I certify that all the information reported on this form in Parts 1 and 4 is true to the best of my knowledge and belief.

DATED at _____, this _____ day of _____, 19____

Signature of Witness

Signature of Authorized Representative

Name of Witness (please print)

Name of Authorized Representative (please print)

Address of Witness

Title/Position (please print)

P10515

Page 3 of 3

Pension
Commission
of Ontario

Please do not detach

Remittance Advice
Pension Benefits Guarantee Fund Assessment Certificate

Please enter in the space provided the amount of the payment enclosed. Return the cheque payable to: 'Pension Benefits Guarantee Fund' with the Pension Benefits Guarantee Fund Assessment Certificate to: Ministry of Finance, Taxation Data Centre, PO Box 620, 33 King Street West, Oshawa ON L1H 8E9.

Due Date	
Payment Enclosed	\$



INSTRUCTIONS FOR COMPLETING THE PENSION BENEFITS GUARANTEE FUND ASSESSMENT CERTIFICATE

NOTE: In these instructions:

- the "Act" refers to the *Pension Benefits Act*, R.S.O. 1990, c.P.8
- the "Regulations" refer to Regulation 909, R.R.O. 1990, as amended by O. Reg. 712/92 effective November 26, 1992
- the "old regulations" refer to Regulation 909, R.R.O. 1990 as it read prior to November 26, 1992.

Introduction

Subsection 18(7) of the Regulations requires the administrator of a pension plan providing defined benefits to file, as an attachment to the Annual Information Return (the "AIR"), a Certificate in respect of the annual assessment payable by the employer to the Pension Benefits Guarantee Fund (the "PBGF"). To meet this requirement, the Pension Benefits Guarantee Fund Assessment Certificate (the "Certificate") must be completed and filed with the Pension Commission of Ontario (the "PCO") on or before the assessment date for such plans. The information on the Certificate is collected solely under the authority of the Act. The following categories of plans are exempted from this requirement:

- multi-employer plans and other plans described in ss. 6(1) of the Regulations;
- plans listed in ss. 47(1) of the Regulations; and
- plans established less than three years prior to the assessment date.

The Certificate does not apply to "qualifying plans" as described in ss. 5.1 and 5.2 of the Regulations. Administrators of qualifying plans should refer to ss. 18(8) and (9) of the Regulations.

Applicability of PBGF Assessment Rules

- For all pension plans with a fiscal year-end after March 31, 1992 but before November 26, 1992, the Regulations apply unless the PBGF assessment for the plan was paid on or before December 31, 1992.
- For all pension plans with a fiscal year-end on or after November 26, 1992, the Regulations apply.

PART 1 TO BE COMPLETED BY THE PENSION PLAN ADMINISTRATOR

For sections 1 to 7, carefully review the preprinted information and if corrections are required, please cross out the information and insert the corrections.

1. Registration Number

This is the Revenue Canada seven digit registration number.

2. Name of Pension Plan

This should be the same as the name shown on the AIR.

3. Name of Employer/Plan Sponsor

This should be the same as the name shown on the AIR.

4. Plan Year End

This refers to the end of the plan year in respect of which this Certificate is filed.

5. Assessment Date

The assessment date, with respect to any plan year, is 9 months after the date of the plan year end.

6. Valuation Date of Last Actuarial Report with the PCO

Actuarial reports include reports filed under any of ss. 3, 4(6), 5(5), 13 or 14 of the Regulations, but exclude reports filed under ss. 5(11) of the Regulations (election not to redetermine). They also include cost certificates filed under ss. 3(1) of the Regulations. The PBGF assessment amount must be calculated based on the information contained in the last actuarial report or cost certificate filed with the PCO.

For assessment purposes, an actuarial report filed with the PCO is considered to be current if the period covered by the report includes the

assessment date. If the assessment calculated in the Certificate is based on a report that is not current, it must be recalculated by completing another Certificate when a current report is filed. The current report must be filed within 9 months of its valuation date. Any increase in the assessment resulting from a recalculation based on the current actuarial report must be paid within 60 days after the date on which the report is filed. A decrease in the assessment resulting from a recalculation will be refunded.

7. Period Covered by the Report

This is the period covered by the actuarial report or cost certificate most recently filed with the PCO.

PART 2 TO BE COMPLETED BY THE ACTUARY

All amounts to be included in this section are determined as at the valuation date of the last actuarial report or cost certificate filed with the PCO.

Box 201 **Going concern assets** means the value of the assets of a pension plan, including accrued and receivable income, determined on the basis of a going concern valuation.

Box 202 **Going concern liabilities** means the present value of the accrued benefits of a pension plan determined on the basis of a going concern valuation.

The information in boxes 201 and 202 is not related to the PBGF assessment. This information is being collected for statistical purposes pursuant to s. 97 of the Act.

Where the valuation date of the actuarial report was prior to November 26, 1992

The PBGF assessment base should be calculated using the formula as prescribed by the Regulations but based on the solvency information contained in the actuarial report. If the actuary has determined that the PBGF assessment base is zero, the actuary should skip boxes 203 to 208 inclusive and enter zero in box 209.

Box 203 **Solvency assets** represent the market value of investments held by the pension fund plus any cash balances and accrued or receivable income items of the plan.

Box 204 **PBGF liabilities** represent the portion of the solvency liabilities* respecting employment in Ontario, excluding any liabilities attributable to the application of ss. 74(7) of the Act.

* Solvency liabilities should be the amount determined in accordance with the old regulations **without** any adjustment for the liabilities for benefits permitted to be excluded under the Regulations.

Box 205 **Solvency liabilities of the pension plan** should be as defined in the old regulations excluding any liabilities attributable to the application of s. 74 of the Act.

Box 206 **Solvency liabilities respecting employment in Ontario** represent the portion of the solvency liabilities reported in box 205 respecting employment in Ontario.

Box 207 **Ontario asset ratio** is derived by dividing the amount in box 206 by the amount in box 205.

Box 208 **Ontario portion of fund** is derived by multiplying the amount in box 203 by the ratio in box 207.

Box 209 **PBGF assessment base** is derived by subtracting the amount in box 208 from the amount in box 204. If the amount is negative, enter zero.

Box 210 Leave this box blank.

Where the valuation date of the actuarial report was November 26, 1992 or later

The amount of PBGF liabilities and PBGF assessment base should be taken directly from the report (which would have been prepared in accordance with the Regulations). If the actuary has determined that the PBGF assessment base is zero, the actuary should skip boxes 203 to 208 inclusive and enter zero in box 209.

Box 203 **Solvency assets** mean the market value of investments held by the pension fund plus any cash balances and accrued or receivable income items of the plan, excluding the value of any qualifying annuity contract of the plan.

Box 204 **PBGF liabilities** mean the portion of the solvency liabilities that relates to the Ontario plan beneficiaries.

Box 205 **Solvency liabilities of the pension plan** should be the amount determined in accordance with the Regulations

Box 206 Leave this box blank.

Box 207 **Ontario asset ratio** is derived by dividing the amount in box 204 by the amount in box 205.

Box 208 **Ontario portion of fund** is derived by multiplying the amount in box 203 by the ratio in box 207.

Box 209 **PBGF assessment base** is derived by subtracting the amount in box 208 from the amount in box 204. If the amount is negative, enter zero.

Box 210 Enter the amount of additional liability for plant closure and/or permanent layoff benefits which is not funded and subject to the 2% assessment pursuant to ss. 37(4)(a)(ii) of the Regulations.

PART 3 DECLARATION OF ACTUARY

The declaration should be fully completed and signed after all of Part 2 has been completed. Please have the actuary's signature witnessed in the space provided.

PART 4 TO BE COMPLETED BY THE PENSION PLAN ADMINISTRATOR

A. Recalculation of Pension Benefits Guarantee Fund Assessment Base

Subsection 37(12) of the Regulations permits the employer to reduce the PBGF assessment base by any special payments made by the employer that are in excess of the minimum special payments required in accordance with the last actuarial report filed and that are made between the valuation date of the report and the assessment date (prior to any application of prior year credit balance). These include special payments made between the fiscal year end date and the assessment date.

Please check the appropriate box. If you check "No" enter the amount from box 209 in box 212. If you check "Yes" complete the appropriate boxes below. Enter the column totals in boxes A, B and C.

Box 211 Add the amount in box A to the amount in Box B and subtract the total from the amount in box C.

Box 212 Subtract the amount in box 211 from the amount in box 209. If the amount is negative, enter zero.

The special payments made by the employer for the indicated period(s) must be accrued and paid as of the assessment date.

B. Calculation of Guarantee Fund Assessment (If the amount entered in box 212 is zero, please proceed to box 217.)

Box 213 Enter 0.5% of any portion of the amount in box 212 that is less than 10% of the amount in box 204.

Box 214 Enter 1.0% of the amount in box 212 that is 10% or more, but less than 20% of the amount in box 204.

Box 215 Enter 1.5% of the amount in box 212 that is 20% or more of the amount in box 204.

Box 216 Add the amounts in boxes 213, 214 and 215 and enter the sum here.

Box 217 **Members** are plan members employed in Ontario who are currently accruing benefits.

Box 218 **Other beneficiaries** consist of:

- a. former members (as defined under the Act) who were employed in Ontario immediately before they ceased to be active members, other than former members for whom all pension benefits are secured under a guaranteed annuity contract or a contract issued under the *Government Annuities Act* (Canada); and,

- b. the surviving spouses or beneficiaries of former members who were Ontario plan beneficiaries as above, if the surviving spouses or beneficiaries are receiving pensions from the plan as a result of the deaths of the former members.

Box 219 Add the amount in box 217 to the amount in box 218 and enter the total here.

Box 220 Multiply the amount in box 219 by \$1.00 and enter the amount here.

Box 221 Add the amount in box 216 to the amount in box 220 and enter the total here.

Box 222 Multiply the amount in box 219 by \$100.00 and enter the amount here.

Box 223 Enter the amount in box 221 or the amount in box 222, **whichever is less.**

Box 224 Enter 2.0% of the amount in box 210.

Box 225 Add the amount in box 223 to the amount in box 224 and enter the sum, or \$4,000,000.00; **whichever is less.**

Box 226 Calculate 8% retail sales tax on the amount in box 225, the maximum is \$320,000.00.

Box 227 Add the amount in box 225 to the amount in box 226 and enter the total here.

If the amount in box 225 is \$25.00 or less, the employer is not required to pay the assessment. However, the Certificate must still be filed with a completed AIR.

PART 5 CERTIFICATION

The certification should be completed and signed after all sections of the Certificate have been completed. The certification may only be signed by:

- the administrator, or where the administrator is a corporate entity, an authorized representative of the corporation; or
- a designated representative of the Board of Trustees, where the pension plan is administered by a Board of Trustees.

Please have the administrator's signature witnessed in the space provided.

Ces instructions sont disponibles en français

Please send a cheque for the amount in Box 227 (payable to "Pension Benefits Guarantee Fund") with the completed AIR and the Certificate to the Ministry of Finance, Taxation Data Centre, P.O. Box 620, 33 King Street West, OSHAWA, Ontario L1H 8E9.



Pension
Commission
of Ontario

250 Yonge Street
29th Floor
Toronto, ON M5B 2N7

Form 3 - Pension Benefits Act, 1990
Regulation 909

SPOUSAL WAIVER OF JOINT AND SURVIVOR PENSION

Name of member/former
member's spouse

I, _____,
am the spouse, within the meaning of the *Pension Benefits Act, 1990*, of

Name of member/
former member

_____ who is entitled to a pension benefit under the

Name of pension plan

_____.

I am aware that, in the absence of a waiver, a pension payable to a former member who has a spouse on the date that the payment of the first installment of the pension is due must be paid as a joint and survivor pension as required by section 44 of the *Pension Benefits Act, 1990*.

I understand that I may waive any right to a survivor pension of at least 60 per cent of my spouse's pension benefit should my spouse predecease me. By waiving my right, my spouse will be able to elect an alternative form of pension which will provide me with no survivor pension or a pension which is less than the 60 per cent minimum.

I hereby waive my right to a joint and survivor pension as required by section 44 of the *Pension Benefits Act, 1990*. The signature of my spouse, below, serves as an acknowledgement that he or she agrees to such a waiver.

I understand that we may revoke this waiver at any time prior to the date of the commencement of payment of my spouse's pension.

City or Town,
Province

Dated at _____ in the Province of _____

Day, Month, Year

this _____ day of _____, _____.

Signature of spouse

Witness to
signature of spouse

Signature of member
or former member

Witness to signature of
member or former member

Prior to completing this form, each party should consider obtaining independent legal advice concerning their individual rights and the effect of this waiver.

NOTE: This waiver is not effective unless it is delivered to the Administrator or the insurance company, where appropriate, within the twelve month period immediately preceding the commencement of payment of the pension benefit as required by subsection 46(2) of the *Pension Benefits Act, 1990*.



Pension
Commission
of Ontario

250 Yonge Street
29th Floor
Toronto, ON M5B 2N7

Form 4 - Pension Benefits Act, 1990
Regulation 909

SPOUSAL WAIVER OF PRE-RETIREMENT DEATH BENEFIT

Name of member/former
member's spouse

hereinafter the "member" or "former member", and

Name of Spouse

hereinafter the "spouse", hereby certify that we are spouses within the meaning of the *Pension Benefits Act, 1990*.

We understand that, in the absence of a waiver, if the member or former member dies,

- (a) prior to the payment of a deferred pension; or
- (b) where the member continues in his or her employment after the normal retirement date, prior to the commencement of payment of pension benefits,

then the person who is the spouse of the member or former member at the date of his or her death is entitled to receive a pre-retirement death benefit of either a lump sum payment or an immediate or deferred life annuity from

Name of pension plan

at the date of the member or former member's death.

We understand that we may waive the right of the spouse to receive any pre-retirement death benefit, in which case payment of this benefit will be made to either,

- (a) a beneficiary designated by the member or former member; or
- (b) the personal representative of the member or former member for distribution as part of his or her estate.

Name of spouse

We hereby waive the right of _____

to receive any payment under section 48 of the *Pension Benefits Act, 1990*.

City or Town,
Province

Dated at _____ in the Province of _____

Day, Month, Year

this _____ day of _____, _____.

Signature of spouse

Witness to
signature of spouse

Signature of member
or former member

Witness to signature of
member or former member

Prior to completing this form, each party should consider obtaining independent legal advice concerning their individual rights and the effect of this waiver.



Pension
Commission
of Ontario

250 Yonge Street
29th Floor
Toronto, ON M5B 2N7

*Pension Benefits Act, 1990
Regulation 909*

INVESTMENT POLICY RETURN

(To be submitted with the Statement of Investment Policies and Goals)

Instructions

1. This return must be submitted for each pension plan required to be registered under the *Pension Benefits Act*. It is accompanied by a Statement of Investment Policies and Goals, except for plans exempted under Instruction 2.
2. For plans completely invested in a fully insured contract and/or deposit administration general funds contract regulated by the *Insurance Act* or *Canadian & British Insurance Companies Act (Canada)*, complete parts A and B. Under section 80 of Regulation 909, such pension plans are exempt from filing a Statement of Investment Policies and Goals.
3. For all other pension plans, complete Parts A & C.

PART A

Registration Number: _____

Name of Employer/Sponsor: _____

Name of Pension Plan: _____

PART B

I certify that:

- a) I am the duly appointed Administrator of the above pension plan.
- b) this plan is completely invested in a fully insured contract and/or deposit administration general funds contract regulated by the *Insurance Act* or *Canadian and British Insurance Companies Act (Canada)*.

Name (print)

Signature

Date

PART C

All statutory requirements listed in this Part must be reflected in the Statement of Investment Policies and Goals, and checked off on this Return. Pension plans completely invested in “pooled funds” should check off the relevant areas, and mark N/A on the lines corresponding to the non-applicable items. This Return and the Statement of Investment Policies and Goals must be submitted to the Pension Commission of Ontario.

Statutory Requirements	Check (✓)	Pension Commission Use Only
1. Type of pension plan (Reg. 67(3))	_____	
2. Nature of plan liabilities (Reg. 67(3))	_____	
3. Rate of return expectations and asset mix policy (Reg. 67(3)(b))	_____	
4. Investment portfolio diversification (Reg. 67(3)(a))	_____	
5. Categories/sub-categories of investment and loans (Reg. 67(3)(c))	_____	
6. Basis for valuation of investments not regularly traded (Reg. 67(3)(h))	_____	
7. Policy regarding conflict of interest (Reg. 67(3)(d))	_____	
8. Disclosure regarding conflict of interest (Reg. 67(3)(e))	_____	
9. Lending of cash or securities (Reg. 67(3)(f))	_____	
10. Retention/delegation of voting rights (Reg. 67(3)(g))	_____	

I certify that:

- (a)

I am the duly appointed Administrator of this plan
- (b)

the Statement of Investment Policies and Goals was adopted on _____
(Date)
- (c)

the Statement of Investment Policies and Goals submitted with the Investment Policy Return complies with the requirements of the *Pension Benefits Act* and Regulation thereunder, and that the information contained therein is, to the best of my knowledge and belief, true and correct.

PARTIE C

Toutes les exigences de la loi énumérées dans cette partie doivent être reflétées dans la déclaration des politiques et des objectifs de placement et cochées sur cette déclaration. Les régimes de retraite entièrement placés dans les "fonds en commun" doivent cocher les lignes appropriées, et inscrire S/O dans celles qui correspondent aux postes sans objet. Cette déclaration et la déclaration des politiques et des objectifs de placement doivent être présentées à la Commission des régimes de retraite de l'Ontario.

Exigences de la loi

Cocher (✓)

Réservé à la Commission des régimes de retraite

1. Type de régime (Règl. 67(3))

2. Nature des obligations (Règl. 67(3))

3. Taux de rendement prévu et politique relative à la composition de l'actif (Règl. 67(3)(b))

4. Diversification du portefeuille (Règl. 67(3)(a))

5. Catégories et sous-catégories de placements et de prêts (Règl. 67(3)(c))

6. Méthode d'évaluation des placements sur lesquels des opérations ne sont pas effectuées régulièrement (Règl. 67(3)(h))

7. Politique à suivre en situation de conflit d'intérêts (Règl. 67(3)(d))

8. Divuligation des conflits d'intérêts (Règl. 67(3)(e))

9. Prêt d'argent ou de valeurs mobilières (Règl. 67(3)(f))

10. Conservation ou délégation des droits de vote (Règl. 67(3)(g))

Je certifie que:

(a) je suis l'Administrateur dûment nommé de ce régime

(b) la déclaration des politiques et des objectifs de placement a été adoptée le

(jour, mois, année)

(c) au mieux de ma connaissance et de ce que je tiens pour véridique, la déclaration des politiques et des objectifs de placement présentée avec cette déclaration de politique de placement répond aux exigences de la Loi sur les régimes de retraite de 1990 et de ses règlements d'application.

Nom
(en caractères d'imprimerie)

Signature

(jour, mois, année)

DÉCLARATION DE POLITIQUE DE PLACEMENT

(À présenter avec la déclaration des politiques et des objectifs de placement)

Directives:

1. Cette déclaration doit être présentée pour l'enregistrement de chaque régime de retraite en vertu de la *Loi sur les régimes de retraite de 1990*. Elle est accompagnée d'une déclaration des politiques et des objectifs de placement, sauf pour les régimes exemptés en vertu de la directive 2.
2. Pour les régimes placés dans un contrat entièrement assuré ou la *Loi sur les compagnies d'assurance canadiennes et britanniques (Canada)*, remplir les parties A et B. Conformément à l'article 80 des Règlements de la *Loi sur les régimes de retraite de 1990*, ces régimes de retraite sont dispensés de la production d'une déclaration des politiques et des objectifs de placement.
3. Pour tous les autres régimes de retraite, remplir les parties A et C.

PARTIE A

Numéro d'enregistrement

Nom de l'employeur/répondant

Nom du régime de retraite

PARTIE B

Je certifie que:

a) je suis l'administrateur dûment nommé du régime de retraite ci-dessus.

b) ce régime est placé dans un contrat entièrement assuré ou dans un contrat de fonds d'administration générale de dépôts régi par la *Loi sur les assurances canadiennes et britanniques (Canada)*.

Nom
(en caractères d'imprimerie)

Signature

Date



RENONCIATION DU CONJOINT À UNE PRESTATION DE DÉCÈS ANTÉRIEURE À LA RETRAITE

ci-après appelé le «participant» ou l'«ancien participant», et
ci-après appelé le «conjoint», certifions par les présentes que nous sommes des
conjoins au sens de la Loi sur les régimes de retraite.

Nous comprenons qu'en l'absence de renonciation, si le participant ou l'ancien
participant décède:

(a) soit avant le paiement d'une pension différée;
(b) soit, lorsqu'il garde son emploi après la date normale de retraite, avant le
commencement du paiement des prestations de retraite,

la personne qui est son conjoint à la date de son décès a le droit de recevoir une
prestation de décès antérieure à la retraite, sous forme de somme globale ou de rente
viagère immédiate ou différée provenant du

Nom du régime
de retraite

à la date de décès du participant ou de l'ancien participant.
Nous comprenons également que nous pouvons renoncer au droit du conjoint de
recevoir une prestation de décès antérieure à la retraite, auquel cas le paiement de
cette prestation sera fait:

(a) soit à un bénéficiaire désigné par le participant ou l'ancien participant;
(b) soit au représentant successoral du participant ou de l'ancien participant à des
fins de distribution comme partie de sa succession.

Nous renonçons par les présentes au droit de
recevoir un paiement aux termes de l'article 48 de la Loi sur les régimes de retraite.

Nom du conjoint

Cité ou ville,
province

Fait à _____, dans la province de _____
le _____, 19____.

Signature du conjoint

Témoin à la signature
du conjoint

Signature du participant/
de l'ancien participant

Témoin à la signature du
participant/
de l'ancien participant

Avant de remplir la présente formule, chaque partie devrait envisager d'obtenir des conseils juridiques
indépendants sur ses droits et l'effet de la renonciation.

RENONCIATION DU CONJOINT À UNE PRESTATION DE PENSION RÉVERSIBLE

Nom du conjoint

du participant/

de l'ancien participant

Je soussigné _____

suis le conjoint, au sens de la Loi sur les régimes de retraite, de

Nom du régime

qui a droit à une prestation de retraite dans le cadre du

Je sais qu'en l'absence de renonciation, une pension payable à un ancien participant qui a un conjoint à la date où le premier versement est exigible doit être payée sous forme de pension réversible conformément à l'article 44 de la Loi sur les régimes de retraite.

Je comprends que je peux renoncer à tout droit à une pension de survivant d'au moins 60 pour cent de la prestation de retraite de mon conjoint au cas où il décéderait avant moi. Le fait que je renonce à mon droit permettra à mon conjoint de choisir une autre forme de pension qui ne me procurera aucune pension de survivant ou me procurera une pension inférieure au minimum de 60 pour cent.

Je renonce par les présentes à mon droit à une pension réversible prévu à l'article 44 de la Loi sur les régimes de retraite. La signature de mon conjoint, ci-dessous, constitue une reconnaissance du fait qu'il accepte ma renonciation.

Je comprends que nous pouvons révoquer la présente renonciation en tout temps avant le commencement du paiement de la pension de mon conjoint.

Cité ou ville, province

Fait à _____, dans la province de _____

le _____, 19____

Signature du conjoint

Témoin à la signature

du conjoint

Signature du participant/

de l'ancien participant

Témoin à la signature du

participant/de l'ancien

participant

Remarque: La présente renonciation n'est valide que si elle est remise à l'administrateur ou à la compagnie d'assurance, selon le cas, dans la période de douze mois qui précède immédiatement le commencement du paiement de la prestation de retraite, conformément au paragraphe 46(2) de la Loi sur les régimes de retraite.

Avant de remplir la présente formule, chaque partie devrait envisager d'obtenir des conseils juridiques indépendants sur ses droits et l'effet de la renonciation.

PARTIE 5 Attestation

L'attestation doit être remplie et signée une fois que toutes les parties du Certificat ont été remplies.

Seule une des personnes suivantes peut la signer:

- l'administrateur, ou lorsque celui-ci est une personne morale, un représentant autorisé de la personne morale; ou
- un représentant désigné du conseil de fiduciaires, lorsque le régime de retraite est administré par un conseil de fiduciaires.

Vous devez faire attester par un témoin la signature de l'administrateur à l'endroit prévu à cet effet.

These instructions are available in English.

b. les conjoints survivants ou les bénéficiaires des anciens participants qui étaient des bénéficiaires ontariens du régime visés ci-dessus, si les conjoints survivants ou les bénéficiaires reçoivent une pension du régime en raison du décès des anciens participants.

Case 219 Additionnez le montant de la case 217 et celui de la case 218, et inscrivez le résultat ici.

Case 220 Multipliez le montant de la case 219 par 1 \$, et inscrivez le montant ici.

Case 221 Additionnez le montant de la case 216 et celui de la case 220, et inscrivez le total ici.

Case 222 Multipliez le montant de la case 219 par 100 \$, et inscrivez le montant ici.

Case 223 Inscrivez le moins élevé des montants suivants : celui de la case 221 ou celui de la case 222.

Case 224 Inscrivez 2% du montant de la case 210.

Case 225 Additionnez le montant de la case 223 et celui de la case 224, et inscrivez le moins élevé des montants suivants : le total ou 4 000 000 \$.

Case 226 Calculez 8% de taxe de vente au détail sur le montant de la case 225, le maximum étant de 320 000 \$.

Case 227 Additionnez le montant de la case 225 et celui de la case 226, et inscrivez le total ici.

Si le montant de la case 225 est égal ou inférieur à 25 \$, l'employeur n'est pas tenu de payer la cotisation. Toutefois, le Certificat doit quand même être déposé avec la déclaration annuelle remplie.

Vous devez faire un chèque au montant inscrit à la case 227 à l'ordre du «Fonds de garantie des prestations de retraite», et l'envoyer avec la Déclaration annuelle et le certificat rempli au ministère des Finances, Centre des données fiscales, C.P. 620, 33, rue King ouest, Oshawa (Ontario) L1H 8E9.

Veillez cocher la case appropriée. Si vous cochez «Non», inscrivez le montant de la case 209 à la case 212. Si vous cochez «Oui», remplissez les cases appropriées ci-dessous. Inscrivez les totaux des colonnes aux cases A, B et C.

Case 211 Additionnez le montant de la case A et celui de la case B, et soustrayez le total du montant de la case C.

Case 212 Soustrayez le montant de la case 211 de celui de la case 209. Si le résultat est négatif, inscrivez zéro.

Les paiements spéciaux faits par l'employeur à l'égard des périodes indiquées doivent être accumulés et payés à la date d'établissement de la cotisation.

B. Calcul du montant de la cotisation au Fonds de garantie (Si le montant inscrit à la case 212 est zéro, veuillez passer à la case 217.)

Case 213 Inscrivez 0,5% de la partie du montant de la case 212 qui est inférieure à 10% du montant de la case 204.

Case 214 Inscrivez 1% du montant de la case 212 qui correspond à 10% ou plus mais à moins de 20% du montant de la case 204.

Case 215 Inscrivez 1,5% du montant de la case 212 qui correspond à 20% ou plus du montant de la case 204.

Case 216 Additionnez les montants des cases 213, 214 et 215, et inscrivez le total ici.

Case 217 Les participants sont des participants au régime qui sont employés en Ontario et qui accumulent actuellement des prestations.

Case 218 Les autres bénéficiaires sont

a. les anciens participants (au sens de la Loi) qui étaient employés en Ontario immédiatement avant de cesser d'être des participants actifs, à l'exception des anciens participants dont toutes les prestations de retraite sont garanties aux termes d'un contrat de rente garanti ou d'un contrat accordé en vertu de la Loi relative aux rentes sur l'Etat (Canada);

Case 204 Passif du Fonds de garantie s'entend de la partie du passif de solvabilité qui est rattachée aux bénéficiaires ontariens du régime.

Case 205 Passif de solvabilité du régime de retraite doit être le montant déterminé conformément au Règlement.

Case 206 N'inscrivez rien.

Case 207 Ratio de l'actif ontarien est obtenu en divisant le montant de la case 204 par celui de la case 205.

Case 208 Partie ontarienne de la caisse est obtenue en multipliant le montant de la case 203 par le ratio de la case 207.

Case 209 Base de cotisation au Fonds de garantie est obtenue en soustrayant le montant de la case 208 de celui de la case 204. Si le résultat est négatif, inscrivez zéro.

Case 210 Inscrivez le montant de passif additionnel rattaché aux prestations de fermeture d'entreprise ou aux prestations de mise à pied permanente qui n'est pas capitalisé et qui est soumis à la cotisation de 2% conformément au sous-aligné 37(4)(a)(ii) du Règlement.

PARTIE 3 Déclaration de l'actuaire

La déclaration doit être remplie en entier et signée après que la partie 2 a été entièrement remplie. Veuillez faire attester par un témoin la signature de l'actuaire à l'endroit prévu à cet effet.

PARTIE 4 Doit être remplie par l'administrateur du régime de retraite

A. Nouveau calcul de la base de cotisation au Fonds de garantie des prestations de retraite

Le paragraphe 37(12) du Règlement permet à l'employeur de diminuer la base de cotisation au Fonds de garantie du montant des paiements spéciaux qu'il a faits, entre la date d'évaluation du dernier rapport actuariel déposé et la date d'établissement de la cotisation (mais avant toute affectation du solde créditeur de l'exercice antérieur), et qui dépassent les paiements spéciaux minimaux exigés conformément au rapport. Sont compris les paiements spéciaux faits entre la date de fin d'exercice et la date d'établissement de la cotisation.

Aux fins de l'établissement de la cotisation, un rapport actuariel déposé à la Commission est considéré comme un rapport courant si la date d'établissement de la cotisation tombe à l'intérieur de la période qu'il vise. Si la cotisation calculée dans le Certificat est fondée sur un rapport qui n'est pas courant, elle doit faire l'objet d'un nouveau calcul dans un autre Certificat qui sera rempli lorsqu'un rapport courant sera déposé. Le rapport courant doit être déposé dans les 9 mois de sa date d'évaluation. Le montant correspondant à l'augmentation de la cotisation par suite d'un nouveau calcul fondé sur le rapport actuariel courant doit être payé dans les 60 jours de la date de dépôt du rapport. Le montant correspondant à la diminution de la cotisation par suite d'un nouveau calcul sera remboursé.

7. Période visée par le rapport

Il s'agit de la période visée par le dernier rapport actuariel ou certificat de cotits déposé à la Commission des régimes de retraite de l'Ontario. Tous les montants qui seront inscrits dans la présente partie sont déterminés à la date d'évaluation du dernier rapport actuariel ou certificat de cotits déposé à la Commission.

PARTIE 2 Doit être remplie par l'actuaire

Case 203	Actif de solvabilité s'entend de la valeur marchande des placements détenus par la caisse de retraite, plus les soldes de trésorerie et les revenus accumulés ou à recevoir du régime.
Case 204	Passif du Fonds de garantie représente la partie du passif de solvabilité* attribuée à l'emploi en Ontario, sans tenir compte des éléments de passif imputables à l'application du paragraphe 74(7) de la Loi.
Case 205	Passif de solvabilité du régime de retraite doit avoir le même sens que dans l'ancien règlement, sans tenir compte des éléments de passif imputables à l'application de l'article 74 de la Loi.
Case 206	Passif de solvabilité attribué à l'emploi en Ontario représente la partie du passif de solvabilité inscrit à la case 205, qui est attribuée à l'emploi en Ontario.
Case 207	Ratio de l'actif ontarien est obtenu en divisant le montant de la case 206 par celui de la case 205.
Case 208	Partie ontarienne de la caisse est obtenue en multipliant le montant de la case 203 par le ratio de la case 207.
Case 209	Base de cotisation au Fonds de garantie est obtenue en soustrayant le montant de la case 208 de celui de la case 204. Si le résultat est négatif, inscrivez zéro.
Case 210	N'inscrivez rien.
Le 26 novembre 1992 ou une date postérieure	
Cas où la date d'évaluation du rapport actuariel est	
Le montant du passif du Fonds de garantie et la base de cotisation au Fonds de garantie doivent être directement tirés du rapport (rapport qui aura été préparé conformément au Règlement). Si l'actuaire a déterminé que la base de cotisation au Fonds de garantie était égale à zéro, il doit passer outre aux cases 203 à 208 inclusivement et inscrire zéro à la case 209.	
Actif de solvabilité s'entend de la valeur marchande des placements détenus par la caisse de retraite, plus les soldes de trésorerie et les revenus accumulés ou à recevoir du régime, sans tenir compte de la valeur des contrats de rente admissibles de celui-ci.	

Cas où la date d'évaluation du rapport actuariel est antérieure au 26 novembre 1992

La base de cotisation au Fonds de garantie doit être calculée au moyen de la formule que prescrit le Règlement, mais en utilisant les renseignements concernant la solvabilité fournis dans le rapport actuariel.

Si l'actuaire a déterminé que la base de cotisation au Fonds de garantie était égale à zéro, il doit passer outre aux cases 203 à 208 inclusivement et inscrire zéro à la case 209.

Les renseignements fournis aux cases 201 et 202 ne sont pas reliés à l'établissement de la cotisation au Fonds de garantie. Ils sont recueillis à des fins statistiques conformément à l'article 97 de la Loi.

Case 202 Passif à long terme s'entend de la valeur actuelle des prestations accumulées d'un régime de retraite, déterminée d'après une évaluation à long terme.

Case 201 Actif à long terme s'entend de la valeur de l'actif d'un régime de retraite, y compris le revenu accumulé et à recevoir, déterminée d'après une évaluation à long terme.

REMARQUE: Dans les directives qui suivent:

- L'expression «la Loi» s'entend de la Loi sur les régimes de retraite, L.R.O. 1990, chap. P8;
- le terme «Règlement» s'entend du Règlement 909 des R.R.O. de 1990, tel qu'il est modifié par le Règlement de l'Ontario 712/92 en vigueur le 26 novembre 1992;
- l'expression «ancien règlement» s'entend du Règlement 909 des R.R.O. de 1990, tel qu'il existait avant le 26 novembre 1992.

Introduction

Le paragraphe 18(7) du Règlement exige de l'administrateur d'un régime de retraite qui offre des prestations déterminées qu'il dépose, en annexe à la déclaration annuelle, un certificat relatif à la cotisation annuelle que l'employeur doit verser au Fonds de garantie des prestations de retraite. Pour satisfaire à cette exigence, le Certificat de cotisation payable au Fonds de garantie des prestations de retraite (le «Certificat») doit être rempli et déposé à la Commission au plus tard à la date d'établissement de la cotisation de ces régimes. Les renseignements du Certificat ne sont recueillis qu'en vertu de la Loi. Les catégories de régimes qui suivent sont exemptées de cette exigence:

- les régimes interentreprises et les autres régimes qui sont décrits au paragraphe 6(1) du Règlement;
- les régimes énumérés au paragraphe 47(1) du Règlement; et
- les régimes établis moins de trois ans avant la date d'établissement de la cotisation.

Le Certificat ne s'applique pas dans le cas des «régimes admissibles» qui sont prévus aux articles 5.1 et 5.2 du Règlement. Les administrateurs des régimes admissibles doivent consulter les paragraphes 18(8) et (9) du Règlement.

Régimes auxquels s'appliquent les règles relatives aux cotisations au Fonds de garantie

- À tous les régimes de retraite dont l'exercice se termine après le 31 mars 1992 mais avant le 26 novembre 1992, le Règlement s'applique, à moins que la cotisation au Fonds de garantie n'ait été versée au plus tard le 31 décembre 1992.

6. Date d'évaluation du dernier rapport actuariel déposé à la Commission

Pour tout exercice du régime, la date d'établissement de la cotisation est fixée à neuf mois après la date de fin d'exercice du régime.

5. Date de l'établissement de la cotisation

Cette expression fait référence à la fin de l'exercice du régime, à l'égard duquel le Certificat est déposé.

4. Fin d'exercice du régime

Ce nom doit être le même que celui qui est inscrit dans la déclaration annuelle.

3. Nom de l'employeur/du promoteur du régime

Ce nom doit être le même que celui qui est inscrit dans la déclaration annuelle.

2. Nom du régime de retraite

Il s'agit du numéro d'enregistrement à sept chiffres aux fins de Revenu Canada.

1. Numéro d'enregistrement

Pour les sections 1 à 7, veuillez examiner attentivement les renseignements déjà inscrits et, si nécessaire, rayez les renseignements erronés et insérez les corrections.

PARTIE 1 Doit être remplie par l'administrateur du régime de retraite

- À tous les régimes de retraite dont l'exercice se termine le 26 novembre 1992 ou après cette date, le Règlement s'applique.

Les rapports actuariels comprennent les rapports déposés aux termes des articles 3, 13 ou 14 ou des paragraphes 4(6) ou 5(5) du Règlement, mais non les rapports déposés aux termes du paragraphe 5(11) du Règlement (choix de ne pas faire de redétermination). Sont également compris les certificats de coûts déposés conformément au par. 3(1) du Règlement. Le montant de la cotisation au Fonds de garantie doit être calculé à partir des renseignements fournis dans le dernier rapport actuariel ou certificat de coûts qui a été déposé à la Commission.



Commission des
régimes de retraite
de l'Ontario

**Avis de remise
Certificat de cotisation payable au Fonds
de garantie des prestations de retraite**

Prière d'inscrire à l'endroit prévu à cet effet le montant du paiement joint. Envoyer le chèque fait à l'ordre du «Fonds de garantie des prestations de retraite», accompagné du Certificat de cotisation payable au Fonds de garantie, à l'adresse suivante : Ministère des Finances, Centre des données fiscales, CP 620, 33, rue King ouest, Ottawa ON L1H 8G9.

\$		Date	
		Paiement joint	

Prière de ne pas détacher

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FAIT à _____ le _____ 19____	
Signature du témoin	Signature du représentant autorisé
Nom du témoin (en caractères d'imprimerie)	Nom du représentant autorisé (en caractères d'imprimerie)
Adresse du témoin	
Titre/Fonction (en caractères d'imprimerie)	

En ma qualité de représentant autorisé de l'admissibilité au régime de retraite susmentionné, je certifie que tous les renseignements fournis aux parties 1 et 4 de la présente formule sont exacts au mieux de ma connaissance et de ce que je tiens pour vérifiable. Toutefois, le certificat doit quand même être déposé.

PARTIE 5 - Attestation

Si le montant total de cotisation au Fonds de garantie est égal ou inférieur à 95 \$, l'employeur n'est pas tenu de payer la cotisation.

Prière de faire un chèque à l'ordre du «Fonds de garantie des prestations de retraite»

Montant total à remettre (Total [225] + [226])

Taxe de vente au détail (8 % de [225])

Cotisation totale au Fonds de garantie (Total [223] + [224], maximum 4 000 000 \$)

2,0 % de [210]

Le moindre de [221] ou [222]

Nombre de bénéficiaires ontariens du régime, selon [219]

200,00 \$ X [222] = [221]

Total [216] + [220]

Autres bénéficiaires [218]

Participants [217]

Total [213] + [214] + [215]

0,5 % de la partie de la base de cotisation au Fonds de garantie de [212] qui est inférieure à 10 % du passif du Fonds de garantie de [204]

1,0 % de la partie de la base de cotisation au Fonds de garantie de [212] qui correspond à 10 % ou plus mais à moins de 20 % du passif du Fonds de garantie de [204]

1,5 % de la partie de la base de cotisation au Fonds de garantie de [212] qui correspond à 20 % ou plus du passif du Fonds de garantie de [204]

20 % ou plus du passif du Fonds de garantie de [204]

Remarque : si le montant de [212] est zéro, passer à la case [217]

PARTIE 4 cont

PARTIE 3 - Déclaration de l'actuaire

Je certifie que je connais le régime susmentionné et qu'au mieux de ma connaissance et de ce que je tiens pour véridique, les renseignements fournis à la PARTIE 2 de la présente formule sont exacts.

FAIT à _____

Signature du témoin

Signature de l'actuaire

Nom du témoin (en caractères d'imprimerie)

Nom de l'actuaire (en caractères d'imprimerie)

Adresse du témoin

Désignation professionnelle (en caractères d'imprimerie)

Personne morale pour laquelle il travaille

PARTIE 4 - Doit être remplie par l'administrateur du régime de retraite

A Nouveau calcul de la base de cotisation au Fonds de garantie des prestations de retraite

L'employeur a-t-il fait, entre la date d'évaluation du dernier rapport actuariel déposé et la date d'établissement de la cotisation, des paiements spéciaux qui dépassent les paiements spéciaux minimaux exigés conformément à ce rapport?

☐ Oui (Préciser de remplir ce qui suit)

☐ Non (Inscrire le montant de [209] - à la case [212] -)

Périodes visées entre la date d'évaluation du dernier rapport actuariel et la date d'établissement de la cotisation		Premier exercice (ou partie de celui-ci) s'étendant du : année _____ mois _____ jour _____ au année _____ mois _____ jour _____		Deuxième exercice (ou partie de celui-ci) s'étendant du : année _____ mois _____ jour _____ au année _____ mois _____ jour _____		Troisième exercice (ou partie de celui-ci) s'étendant du : année _____ mois _____ jour _____ au année _____ mois _____ jour _____		Total pour toutes les périodes	
A	B	C	D	E	F	G	H	I	J
Paiements spéciaux minimaux exigés conformément au dernier rapport actuariel	Passif à long terme non capitalisé	Déficit de solvabilité							
Paiements spéciaux									
faits par l'employeur									
\$									

Montant qui dépasse les paiements spéciaux minimaux (Montant C moins le total de A plus B)

[211]

\$ _____

Base de cotisation au Fonds de garantie, recalculée (209 moins 211) :

[212]

si le résultat est négatif, inscrire zéro



Commission des
régimes de retraite
de l'Ontario

**Certificat de cotisation payable au
Fonds de garantie des prestations
de retraite**

Loi sur les régimes de retraite, L.R.O. 1990, chap.P.8 (LRR)

Prête de consulter les directives pour remplir la
présente formule.

Envoyer la formule
à l'adresse suivante :
Ministère des Finances
Centre des données fiscales
CP 620
33, rue King ouest
Oshawa ON L1H 8E9

PARTIE 1

1 N° d'enregistrement

2 Nom du régime de retraite

3 Nom de l'employeur/du promoteur du régime

4 Fin d'exercice du régime

année	mois	jour
-------	------	------

6 Date d'évaluation du dernier rapport
actuariel déposé à la Commission

année	mois	jour
-------	------	------

7 Période visée par le rapport
actuariel : du

année	mois	jour
-------	------	------

au

année	mois	jour
-------	------	------

5 Date d'établissement de la cotisation

année	mois	jour
-------	------	------

PARTIE 2 - Doit être remplie par l'actuaire

Prête de remplir ce qui suit à partir des renseignements fournis dans le dernier rapport actuariel déposé à la Commission. Il est obligatoire de remplir les cases 201 et 202.

REMARQUE : Si la base de cotisation au Fonds de garantie des prestations de retraite est égale à zéro, passer outre aux cases 203 à 208 inclusivement et inscrire zéro à la case 209.

Actif à long terme 201

Passif à long terme 202

Actif de solvabilité 203

Passif du Fonds de garantie 204

Passif de solvabilité du régime de retraite 205

Passif de solvabilité attribué à l'emploi en Ontario 206

Ratio de l'actif ontarien - (204 ou le cas échéant, diviser 205 par 207)

Partie ontarienne de la caisse - (multiplier 203 par le ratio de 207)

Base de cotisation au Fonds de garantie - (204 moins 208 ; si le résultat est négatif, inscrire zéro) 209

Montant de passif additionnel rattaché aux prestations de fermeture d'entreprise ou aux prestations de mise à pied permanente qui n'est pas capitalisé et qui est soumis à la cotisation de 2% conformément au sous-alinéa 37(4)a)(ii) du Règlement.

210

27. Pendant la période de déclaration, une personne ou un groupe a-t-il acquis le contrôle de la société qui est le répondant du régime de retraite?

Si le répondant du régime est une société, indiquez si le contrôle de cette société a changé de mains pendant l'exercice du régime. Si le répondant n'est pas une société, cochez la case «sans objet».

Les questions touchant les sections 15 à 29 Canada, Division des régimes enregistrés, Services des renseignements généraux, au 613-954-0419.

RENSEIGNEMENTS GÉNÉRAUX

Il y a un guide distinct pour les administrateurs tenus de remplir le Certificat de cotisation payable au Fonds de garantie des prestations de retraite.

Délai de dépôt des formulaires

Les formulaires remplis à l'égard des régimes à cotisations déterminées doivent être déposés dans les six mois suivant la fin de la période de déclaration du régime. Pour tous les autres régimes, les formulaires doivent être déposés dans les neuf mois suivant la fin de la période de déclaration du régime.

Où envoyer la Déclaration de renseignements annuelle et les annexes

Prière d'utiliser l'enveloppe jointe pour envoyer les documents déterminés au ministère des Finances, Centre des données fiscales, C.P. 620, 33, rue King ouest, Oshawa (Ontario) L1H 8B9:

- la Déclaration de renseignements annuelle, dûment remplie et signée;
- l'annexe A de la Déclaration de renseignements annuelle;
- un chèque payable au «Ministère des Finances de l'Ontario» pour les droits de dépôt annuels;
- le Certificat de cotisation payable au Fonds de garantie des prestations de retraite (s'il y a lieu);
- un chèque distinct payable au «Fonds de cotisation des prestations de retraite» pour la cotisation annuelle au FCPR (s'il y a lieu).

These instructions are available in English.

Les numéros ci-après correspondent aux numéros de l'annexe A.

15. Montants transférés d'autres régimes

Total des montants effectifs transférés d'autres RPA, RPPDB et REER dans la caisse de pensions.

16. Paiement de prestations par le régime

Montant total prestations versées aux bénéficiaires.

17. Transfert de prestations à d'autres régimes

Montant effectif total de tous les transferts à d'autres régimes, y compris les RPA, les REER, les CRIF, les FRV et les FEER.

21. Le régime de pension a-t-il cessé ou est-il devenu inactif avant ou pendant cette période de déclaration?

Un régime cesse lorsqu'il n'y a plus de cotisations et que les participants ont cessé d'accumuler des prestations. Un régime est inactif lorsqu'il a cessé mais que tous les fonds du régime n'ont pas été déboursés.

22. Combien de participants actifs étaient des personnes rattachées à l'employeur?

Un participant actif est un employé qui accumule des prestations dans un régime à prestations déterminées, ou qui verse des cotisations ou pour le compte de qui l'employeur verse des cotisations à un régime à cotisations déterminées.

Selon le règlement de l'impôt sur le revenu, une personne rattachée est généralement une personne qui:

- est, directement ou indirectement, propriétaire d'au moins 10 pour cent des actions émises d'une catégorie du capital-actions de l'employeur ou d'une société liée;
- a un lien de dépendance avec l'employeur;
- est un actionnaire désigné de l'employeur par application du paragraphe 248(1) de la LIR

Pour la définition complète, voir le paragraphe 8500(3) du Règlement de l'impôt sur le revenu.

Après la section 23, passez à la section 28 pour les régimes interentreprises. Pour les régimes interentreprises déterminés, vous arrêter ici. Les autres régimes, passez à la section 24.

Case 7 Les cotisations des participants sont le

montant des cotisations requises effectuées versées par les participants à l'égard de la période de déclaration. Ce montant est déterminé en fonction des cotisations effectives que les participants ont versées pendant la période de déclaration, rajustées des montants en transit au début et à la fin de la période de déclaration. N'incluez pas les cotisations facultatives.

Case 8 Les cotisations facultatives

supplémentaires des participants sont les montants supplémentaires que les participants versent à titre facultatif à l'égard de la période de déclaration.

11. Renseignements sur les participants à la fin de la période de déclaration

Prière d'indiquer le nombre de participants au régime, dans la case appropriée. N'incluez pas les anciens participants (ceux qui ont une rente acquise différée, les retraités et les autres personnes qui ont droit à des prestations en vertu du régime).

12. Calcul des droits de dépôt de la Déclaration de renseignements annuelle

L'administrateur du régime est tenu de verser des droits de dépôt annuels au ministre des Finances de l'Ontario, conformément au par. 18(3) de Règlement. Transférez les renseignements de la case 10 à la case 11 pour calculer ce droit.

- Multipliez le nombre de participants selon la case 11 par 6,15 \$ et inscrivez ce montant à la case 12. Si le montant de la case 12 est au moins 200 \$ mais moins de 50 000 \$, inscrivez le montant de la case 12 à la case 13.
- Si le montant de la case 12 est moins de 200 \$, le droit de dépôt annuel à verser est de 200 \$. Inscrivez ce montant à la case 13.
- Si le montant de la case 12 est supérieur à 50 000 \$, le droit de dépôt annuel à verser est de 50 000 \$. Inscrivez ce montant à la case 13.

Établir le chèque à l'ordre du «Ministre des Finances de l'Ontario» et retourner-le avec la DRA dûment remplie.

13. Confirmation de conformité avec la LRR

Veuillez confirmer que le régime de retraite est administré conformément aux exigences de la LRR et de son Règlement. S'il y a eu inobservation, veuillez l'indiquer et joindre une note expliquant brièvement l'observation.

14. Attestation

L'attestation doit être remplie et signée une fois que toutes les sections de la DRA et de l'annexe A ont été remplies.

L'attestation ne peut être signée que par :

- L'administrateur ou, si l'administrateur est une personne morale ou un comité de retraite, un représentant autorisé de la personne morale ou du comité de retraite;
- un représentant désigné du Conseil de fiduciaires, si le régime de pension est administré par un Conseil de fiduciaires.

Veuillez faire témoigner de la signature de l'administrateur dans l'espace prévu.

Pour toute question sur ce qui précède, adressez-vous à la Commission des régimes de retraite de l'Ontario, Direction des régimes de retraite, au 416-314-0672.

4. Période de déclaration de régime

Ces dates préimprimées correspondent à l'exercice du régime selon les documents du régime de retraite. Si elles sont erronées, veuillez insérer les bonnes dates et joindre une note pour indiquer quand la modification nécessaire a été déposée.

5. Administrateur du régime
Il s'agit de la personne ou d'un organisme prescript qui est légalement responsable de l'administration du régime.

6. Employeur/promoteur du régime
Il s'agit de l'organisme qui, selon nos dossiers, a établi et maintient le régime de retraite.

7. Société de fiducie/société d'assurances
Il s'agit de l'organisme qui détient les éléments d'actif de la caisse de retraite. L'article 54 du Règlement donne une liste des organismes qui peuvent administrer une caisse de retraite.

8. Endroit où se trouvent les livres et les registres
Si les registres du régime de retraite ne sont pas gardés à l'adresse indiquée dans la section 5, veuillez indiquer l'adresse où ils le sont.

9. Nom de l'agent négociateur
Veuillez donner le nom du syndicat compétent.

10. Renseignements concernant le financement pour la période de déclaration

Veuillez fournir des renseignements détaillés au sujet des cotisations requises et versées à la caisse de retraite pour la période de déclaration indiquée dans la section 4 de ce formulaire. Les renseignements à inscrire dans les cases 1, 2 et 3 doivent être fondés sur les plus récents certificats de cotisations déposés à la Commission des régimes de retraite de l'Ontario, le cas échéant.

Case 1 Les cotisations patronales au titre du coût normal sont la part patronale du coût des prestations de retraite et des prestations accessoires accumulées pendant la période de déclaration.

Case 2 Les paiements spéciaux de l'employeur, qui peuvent être requis dans les régimes à prestations déterminées ainsi que dans certains régimes combinés, comprennent les paiements spéciaux versés à l'égard de la période de déclaration pour couvrir le passif non capitalisé, les déficits actuariels (selon la définition au Règlement 746 de la LRR en date du 31 décembre 1987) ou les déficits de solvabilité.

Si un certificat de coût visant une ou plusieurs périodes antérieures a été déposé pendant la période de déclaration en cours, et si des paiements supplémentaires dus à l'égard de périodes antérieures ont été inscrits dans le certificat de coût, prière d'inclure également ces paiements dans cette case.

Case 3 La réduction des cotisations patronales requises comprend les gains actuariels appliqués en réduction des cotisations patronales pour le coût normal, les montants perdus de cotisations patronales non acquises, ainsi que le solde créditeur de l'année antérieure disponible au début de la période de déclaration.

Case 4 Les cotisations patronales requises se calculent par l'addition aux paiements spéciaux (case 2) des cotisations patronales au titre du coût normal (case 3) avant la soustraction de toute réduction applicable (case 3).

Case 5 Les cotisations requises des participants sont les cotisations, le cas échéant, requises des participants au régime à l'égard de la période de déclaration, selon les plus récents certificats de coût déposés.

Case 6 Les cotisations patronales sont le montant des cotisations requises effectives versées à l'égard de la période de déclaration par l'employeur. Ce montant est déterminé en fonction des cotisations patronales effectives versées pendant la période de déclaration, rajustées de tout montant en transit au début et à la fin de la période de déclaration.



INSTRUCTIONS SUR LA FAÇON DE REMPLIR LA DÉCLARATION DE RENSEIGNEMENTS ANNUELLE

- **Régime à prestations déterminées (PD)**
Les prestations de pension du participant sont fondées sur une formule prédéterminée.
- **Régime à cotisations déterminées (CD)**
Une somme d'argent déterminée, définie aux termes du régime de retraite, est versée au nom de chaque participant au régime de retraite, à intervalles réguliers. La prestation de pension du participant est déterminée par le montant des cotisations, majorée des revenus de placement (ou diminuée des pertes) au compte du participant, et par les taux de rente en vigueur au moment de la retraite du participant.
- **Régime de retraite interentreprises (RRI)**

La production de la Déclaration de renseignements annuelle (DRA) est exigée en vertu de la Loi de l'impôt sur le revenu (Canada) («la LIR») et de la Loi sur les régimes de retraite (Ontario) (la «LR»). Les renseignements de l'annexe A ne sont recueillis qu'en vertu de la LIR en ne feront pas partie du dossier de régime de la Commission des régimes de retraite de l'Ontario.

Les administrateurs ou leurs mandataires doivent remplir avec exactitude toutes les sections applicables de la DRA, l'annexe A et le Certificat de cotisation de la DRA, payable au Fonds de garantie des prestations de retraite (s'il y a lieu), et les produire dans les délais prescrits. Les retards de production peuvent donner lieu à des pénalités financières aux termes du par. 162(7) de la LIR et du par. 18(5) du Règlement 909 de la LR, modifié (le «Règlement»). En outre, en cas de retard de production de la DRA, l'enregistrement du régime peut être retiré en vertu des dispositions 147.1(11) et (12) de la LIR.

La numérotation des sections de ces instructions correspond à celle de la DRA. Veuillez suivre attentivement ces instructions pour éviter qu'on vous retourne des formulaires mal remplis ou incomplets.

1. Numéro d'enregistrement

Depuis le 31 mars 1995, les régimes enregistrés en Ontario n'ont plus de numéro d'enregistrement provincial distinct. Ces régimes seront désignés par le numéro à sept chiffres d'enregistrement attribué par Revenu Canada. Si le numéro d'enregistrement préimprimé dans la section 1 est erroné, veuillez nous téléphoner et nous vous enverrons un formulaire corrigé.

Pour les section 2 à 7, vérifiez attentivement les renseignements préimprimés et, s'il faut y apporter des corrections, biffez les renseignements et insérez les corrections.

2. Nom du régime de retraite

Cette section indique le nom du régime de retraite, tel qu'il apparaît dans nos registres.

3. Genre de régime

Le régime doit être de l'un des quatre genres fondamentaux ci-après :

- **Autres régimes**
La combinaison d'éléments de régimes à PD et à CD peut donner un régime combiné. Cela peut comprendre un régime unique couvrant deux catégories d'employés, dont l'une reçoit une prestation PD et l'autre une prestation CD. Cela peut aussi comprendre un régime couvrant mais une prestation PD pour courants mais une prestation CD pour services passés à certains participants. Cependant, cela ne comprend pas les régimes à PD qui permettent des cotisations volontaires facultatives.

Renseignements pour Revenu Canada

14	\$	
15	\$	
16	\$	
17	\$	
18	\$	
19	\$	

année	mois	jour
-------	------	------

Dans l'affirmative, donnez la date réelle de la cessation du régime

☐ Oui ☐ Non

21 Le régime a-t-il cessé ou est-il devenu inactif pendant ou au cours de la période de déclaration?

Si tous les éléments d'actif étaient répartis pendant la période de déclaration, donnez la date de la répartition finale des fonds.

Aucune autre question

année	mois	jour
-------	------	------

La date de la répartition finale des fonds

22 Combien de participants actifs étaient des personnes rattachées à l'employeur?

20	
21	

23 Combien d'employeurs participaient au régime à la fin de la période de déclaration?

- Dans le cas d'un régime en reprise, passez à la question 28.
- Dans le cas d'un régime en reprise, passez à la question 24.
- Pour les autres régimes, passez à la question 24.

24 Indiquez si des participants du régime participant aussi à un autre régime de pension agréé ou un autre régime de participation différée aux bénéfices offert par le répondant de ce régime?

☐ Oui ☐ Non

25 Indiquez si des participants du régime participant à un autre régime de pension agréé ou un autre régime de participation différée aux bénéfices d'un autre répondant qui a un lien de dépendance avec le répondant de ce régime?

☐ Oui ☐ Non

26 Des personnes rattachées ont-elles commencé à participer au régime ou ont-elles cessé de participer au régime pendant la période de déclaration?

☐ Oui ☐ Non

27 Durant la période de déclaration du régime, une personne ou un groupe de personnes a-t-il acquis le contrôle de la société qui répond du régime?

☐ Oui ☐ Non ☐ S/O

- Dans le cas d'un régime à cotisations déterminées, aucune autre question.
- Pour les autres régimes, passez à la question 28.

28 Des prestations pour services passés postérieures à 1989 ont-elles été versées à des participants au régime pendant la période de déclaration?

☐ Oui ☐ Non

29 Des prestations pour services passés antérieures à 1992 ont-elles été prévues pour des participants au régime qui étaient des personnes rattachées pendant la période de déclaration?

☐ Oui ☐ Non

Période visée par la présente déclaration du

année	mois	jour
-------	------	------

au

année	mois	jour
-------	------	------

N° d'enregistrement

Nom du régime de retraite

Revenu Canada - Annexe A

12 Calcul des droits de dépôt de la déclaration annuelle

Nombre total de participants (raporte du 10) 11 X 6,15 \$ = 12 \$

Droits de dépôt annuels payables : 13 \$

Les droits à payer correspondent au chiffre indiqué au numéro 11 multiplié par 6,15 \$, les droits minimaux étant de 200 \$ et les droits maximaux de 50 000 \$.

Établir le chèque à l'ordre du « Ministère des Finances de l'Ontario ».

13 Confirmation de conformité

Les administrateurs de régimes de retraite sont tenus d'examiner la déclaration des politiques et des objectifs de placement au moins une fois par année en vue de la confirmer ou de la modifier.

Cette déclaration a-t-elle été examinée depuis le dépôt de la dernière déclaration annuelle? ☐ Oui ☐ Non Si oui, indiquer la date du dernier examen : année mois jour

Cette déclaration a-t-elle été modifiée depuis le dépôt de la dernière déclaration annuelle? ☐ Oui ☐ Non Si oui, indiquer la date de dépôt de la dernière modification à la Commission : année mois jour

Le régime et la caisse de retraite ont-ils été administrés conformément à la Loi sur les régimes de retraite, L.R.O. 1990, chap. P.8, et au Règlement 909, R.R.O. 1990 (tel qu'il est modifié), au cours de la période visée par la présente déclaration?

☐ Oui ☐ Non Si non, joindre une explication.

14 Attestation

En ma qualité de représentant autorisé de l'administrateur du régime de retraite mentionné ci-dessus, je certifie que tous les renseignements fournis dans la présente déclaration sont exacts au mieux de ma connaissance et de ce que je tiens pour vérifiable.

Fait à _____, le _____, 19____

Signature du témoin _____

Nom du témoin (caractères d'imprimerie) _____

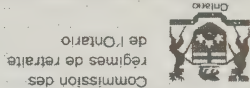
Adresse du témoin _____

Titre/poste (caractères d'imprimerie) _____

Nom du représentant autorisé (caractères d'imprimerie) _____

Prière de ne pas détacher

Avis de remise
Déclaration annuelle



Prière d'inscrire à l'adresse suivante : Ministère des Finances, Centre des données fiscales, CP 620, 33, rue King ouest, Oshawa

ON L1H 8E9

Date d'échéance	Paie joint
<input type="text"/>	<input type="text"/>

Indiquer le nombre de participants au régime par province ou territoire :

9a	9b
Provinces ou territoires désignés	
Terre-Neuve	
Nouvelle-Écosse	
Nouveau-Brunswick	
Québec	
Ontario	
Manitoba	
Saskatchewan	
Alberta	
Colombie-Britannique	
Territoires du Nord-Ouest	
Territoire du Yukon	
Total	

Nombre total de participants au régime dans les provinces ou territoires désignés (additionner 9a et 9b)

10

Reportez ce chiffre au 11

Ile-du-Prince-Édouard

Hors du Canada

Cotisations obligatoires calculées conformément au dernier certificat de coûts déposé :

1

+

2

-

3

=

4

Cotisations au titre du coût normal de l'employeur

Plus : Paiements spéciaux de l'employeur

Moins : Réduction des cotisations obligatoires de l'employeur

Cotisations obligatoires de l'employeur

Cotisations obligatoires des participants

Cotisations versées à l'égard de la période visée par la présente déclaration :

5

6

7

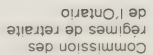
8

Cotisations facultatives supplémentaires des participants

10 Renseignements concernant le financement pour la période visée par la présente déclaration

8 Lieu où sont conservés les livres ou dossiers par l'administrateur du régime ou - même adresse que celle de l'administrateur

9 Nom de l'agent négociateur de convention collective représentant le plus grand nombre de participants au régime ou - objet sans



Loi sur les régimes de retraite, L.R.O. 1990, chap. P.8 (Loi)



OSHAWA ON L1H 8E9

2. Nom du régime de retraite

4 Période visée par la présente déclaration du

année	mois	jour
au		
année	mois	jour

Personne - ressource

[illegible]

Adresse

--	--

1

01117	
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2111A

--	--

Telex

[illegible]

6 Emp

WON

--	--

Adresse

--	--

1

Villie

1

101	
-----	--

919

100

10.7 J

WON

Adresse

1

--	--

--	--

Vile

--	--

Tel:

81509

Page 1 de 4

811501

PRÉSENTATION DE LA DÉCLARATION DE RENSEIGNEMENTS ANNUELLE CONJOINTE AUX ADMINISTRATEURS DE TOUTS LES RÉGIMES DE RETRAITE ENREGISTRÉS EN ONTARIO

La Commission des régimes de retraite de l'Ontario et Revenu Canada ont adopté une Déclaration de renseignements annuelle (DRA) conjointe pour éliminer le double emploi et réduire le coût de la préparation de déclarations annuelles distinctes.

Vous devez remplir la DRA conjointe et la retourner au ministère des Finances, Centre des données fiscales, C.P. 620, 33, rue King ouest, Oshawa (Ontario) L1H 8E9 pour la date d'échéance fixée dans la *Loi sur les régimes de retraite*, L.R.O. 1990 et son règlement d'application. Les échéances de production de Revenu Canada coïncident désormais avec celles de la Commission des régimes de retraite de l'Ontario.

Vous devez veiller à faire remplir et signer le formulaire de DRA par l'administrateur pour tous les genres de régime et à faire établir un chèque couvrant les droits applicables à l'ordre du Ministre des Finances de l'Ontario.

En outre, pour les régimes à prestations déterminées, veuillez produire un Certificat de cotisation payable au Fonds de garantie des prestations de retraite, qui devra porter la signature de l'actuaire du régime et de l'administrateur du régime. Il faut établir un chèque distinct pour la cotisation payable au FCPR, plus la taxe de vente au détail, à l'ordre du Fonds de garantie des prestations de retraite.

Nous vous saurons gré de produire les formulaires remplis dans les délais fixés.

DECLARATION DE L'ADMINISTRATEUR

Je soussigné, _____, demande par les présentes l'enregistrement, conformément à la Loi et aux règlements, de la ou des modifications apportées au régime de retraite et qui sont décrites dans la présente formule. Je fais cette demande en ma qualité d'administrateur / de signataire dûment autorisé de l'administrateur (encrer la description appropriée) de

(le «régime de retraite») _____ (nom du régime de retraite)

dont le numéro d'enregistrement est _____
Sont annexés une copie certifiée conforme du document modificatif ainsi que les autres documents qui doivent être déposés aux termes de la Loi et des règlements.

JE DÉCLARE CE QUI SUIT :

1. Les documents déposés en même temps que la présente formule comprennent une copie certifiée conforme du ou des documents modificatifs, et ces documents ainsi que tous les autres documents déposés en même temps que la présente demande sont conformes à la Loi et aux règlements.
 2. Je comprends que la responsabilité de faire en sorte que les documents déposés en même temps que la présente formule soient conformes à la Loi et aux règlements incombe à l'administrateur. J'ai rempli cette obligation et je me suis conformé aux dispositions de la Loi et des règlements dans la présentation de la présente demande d'enregistrement.
 3. Je reconnais que la présente déclaration s'étend à l'observation des lois sur les régimes de retraite de toute autorité législative désignée à l'intérieur du Canada, autre que l'Ontario, dans les cas où ces lois s'appliquent aux participants et anciens participants au régime de retraite.
- Je déclare connaître les obligations que m'impose la Loi en ma qualité d'administrateur du régime de retraite et que le contenu de la présente formule et des documents déposés en même temps qu'elle ainsi que mes déclarations sont exacts, au mieux de ma connaissance et de ce que je tiens pour véridique.

FAIT à _____, le _____ 199

Signature du témoin

Signature de l'administrateur ou du signataire autorisé

Nom du témoin (en caractères d'imprimerie)

Nom de l'administrateur ou du signataire autorisé (en caractères d'imprimerie)

Titre/Fonction

Adresse du témoin

Formule 1.1 - DEMANDE D'ENREGISTREMENT D'UNE MODIFICATION APPORTÉE
 À UN RÉGIME DE RETRAITE

20. La présente demande porte-t-elle sur une modification en vue d'offrir des augmentations automatiques (contractuelles) des pensions en vigueur ou des pensions différées (p. ex. l'indexation selon l'indice des prix à la consommation)?

☐ oui

☐ non

LIQUIDATION TOTALE DU RÉGIME

21. a) La présente demande vise-t-elle la liquidation totale du régime de retraite?

☐ oui

☐ non

Si oui, quelle est la date de prise d'effet de la liquidation?

_____ / _____ / _____
 année mois jour

b) Quel est le principal motif de la liquidation du régime de retraite?

☐ fusion avec un autre régime de retraite /

remplacement par un autre régime de retraite

numéro d'enregistrement de ce régime de retraite

☐ dissolution de la compagnie ou fermeture d'une installation;

☐ il n'y a plus de participants;

☐ raisons financières;

☐ autre (préciser) _____

22. Si le régime est liquide et n'est pas remplacé par un autre régime de retraite, indiquer si l'employeur offrira un des arrangements suivants :

☐ un régime enregistré d'épargne-retraite (REER);

☐ un régime de participation différée aux bénéfices (RPDB);

☐ à la fois un REER et un RPDB;

☐ ni un REER ni un RPDB.

Pour les régimes de retraite qui offrent des prestations déterminées, répondre aux questions 17 à 20.

17. Calcul de la prestation

Le calcul des prestations de retraite par année de service est fondé sur (cocher la case la plus appropriée) :

- ☐ Les gains moyens de fin de carrière pour les _____ dernières années;
- ☐ Les gains maximaux moyens pour les _____ (des _____ dernières années, le cas échéant);
- ☐ Les gains moyens de carrière;
- ☐ une prestation uniforme.

18. a) Si le calcul de la prestation est fondé sur les gains moyens de carrière, les gains de carrière ou les prestations sont-ils révisés, par exemple selon un indice de prix ou de salaires?

- ☐ oui
- ☐ non

b) Si le calcul de la prestation est révisé, tous les gains sont-ils compris ou seulement ceux qui sont postérieurs à une date précisée?

- ☐ oui (tous les gains sont compris)

- ☐ non (seuls les gains postérieurs à la date suivante : _____ / _____ / _____
année / mois / jour)

19. Formule de calcul de la prestation - pour les prestations normales de retraite uniquement (ne pas inclure les prestations facultatives ni les prestations de remplacement qui dépendent des conditions particulières)

Indiquer le montant ou le taux utilisé dans la formule de calcul de la prestation par année de service:

- ☐ _____ % des gains, s'il n'y a pas de coordination avec le RPC/RRO;
- ☐ _____ % des gains au-dessus du MGAP;
- ☐ _____ % des gains jusqu'au MGAP;
- ☐ _____ \$ par mois pour chaque année de service;
- ☐ _____ \$ par mois pour chaque période de _____ heures de travail;
- ☐ autre (préciser) _____

14. Coordination avec le Régime de pensions du Canada (RPC) ou le Régime de rentes du Québec (RRQ) : Indiquer si le taux de cotisation ou le taux des prestations est coordonné avec les cotisations ou les prestations du RPC/RRQ :

- ☐ taux de cotisation coordonné avec le RPC/RRQ;
- ☐ formule de calcul de la prestation coordonnée avec le RPC/RRQ;
- ☐ les deux sont coordonnés avec le RPC/RRQ;
- ☐ aucun des deux n'est coordonné avec le RPC/RRQ.

15. Cotisations des employés : Donner le taux de cotisation des employés destinée au coût normal :

- ☐ aucune cotisation d'employé n'est requise;
- ☐ % des gains, s'il n'y a pas de coordination avec le RPC/RRQ;
- ☐ % des gains au-dessus du maximum des gains annuels ouvrant droit à pension (MGAP);
- ☐ % des gains jusqu'au MGAP;
- ☐ autre (préciser) _____

16. Cotisations de l'employeur : Indiquer le montant ou le taux de cotisation de l'employeur destinée au coût normal :

- ☐ l'employeur paye le solde du coût;
- ☐ % des gains, s'il n'y a pas de coordination avec le RPC/RRQ;
- ☐ % des gains au-dessus du MGAP;
- ☐ % des gains jusqu'au MGAP;
- ☐ \$ par année;
- ☐ autre (préciser) _____

10. Indiquer le type de régime (dans les cas où la présente modification change le type de régime, indiquer le nouveau type) :

☐ régime interentreprises

_____ à prestations déterminées,

_____ à cotisations déterminées;

☐ régime à cotisations déterminées;

☐ régime à prestations déterminées;

☐ régime qui offre une combinaison de prestations déterminées et de cotisations déterminées;

_____ autre (préciser) _____

11.

Régimes interentreprises ou régimes à coûts négociés

Le régime de retraite est-il un régime de retraite interentreprises qui est établi conformément à une convention collective ou à un contrat de fiduciaire, ou un régime de retraite qui offre des prestations déterminées dans le cadre duquel l'obligation qu'a l'employeur de cotiser au régime de retraite est limitée à un montant ou à un taux fixe indiqué dans une convention collective? (Voir le paragraphe 6(1) du Règlement 909.)

☐ oui

☐ non

12.

Admissibilité au régime de retraite

Renseignements concernant les prestations et les cotisations

Préciser la ou les catégories d'employés qui sont admissibles au régime (cocher plus d'une case au besoin, sauf si la case «tous les employés» est cochée) :

☐ tous les employés;

☐ les employés salariés;

☐ les employés rémunérés à l'heure;

☐ les membres d'un syndicat;

☐ les cadres, y compris les «personnes rattachées» au sens de cette expression dans la Loi de l'impôt sur le revenu (Canada);

☐ autre (préciser) _____

13.

Âge normal de la retraite

Indiquer l'âge normal de la retraite selon le texte du régime : _____

DONNÉES STATISTIQUES RELATIVES AUX PENSIONS ET AUX RÉGIMES DE RETRAITE

Les renseignements demandés aux questions 8 à 22 doivent être fournis aux fins de la compilation de données statistiques relatives aux pensions et aux régimes de retraite conformément à l'article 97 de la Loi sur les régimes de retraite.

8. a) La présente demande porte-t-elle sur une modification en vue d'offrir des augmentations ponctuelles des pensions en vigueur ou des pensions différenciées? (si oui, répondre aux questions b) et c) ci-dessous, sinon, passer à la question 9)

- ☐ oui
- ☐ non

b) Comment ces augmentations seront-elles faites?

- ☐ augmentation ponctuelle conformément à une convention collective et à une modification du régime;
- ☐ augmentation ponctuelle consentie volontairement par l'employeur ou le promoteur du régime en conformité avec une modification du régime;
- ☐ autre (préciser) _____

c) Quelle est la date de prise d'effet de la modification? _____
année / mois / jour

9. a) Les prestations fournies par le régime sont-elles garanties ou assurées entièrement par une compagnie d'assurance?

- ☐ oui
- ☐ non

b) Si la réponse à la question 9 a) est non, indiquer quel est l'arrangement/la convention de gestion financière :

- ☐ contrat auprès d'une compagnie d'assurance non entièrement assuré ou garanti;
- ☐ contrat de fiducie conclu avec :
- ☐ des particuliers fiduciaires;
- ☐ une compagnie de fiducie;
- ☐ société de caisse de retraite;
- ☐ gouvernement, ou organisme, conseil ou commission constitué en vertu d'une loi pour l'administration d'une caisse de retraite;
- ☐ autre (préciser) _____

6. Indiquer si la demande porte sur une ou des modifications concernant :

- ☐ le transfert d'éléments d'actif;
- ☐ la fusion de régimes;
- ☐ le remboursement de cotisations;
- ☐ la répartition de l'excédent;
- ☐ la conversion du régime;
- ☐ la réduction des prestations accumulées ou le remboursement de cotisations aux termes de l'article 47 du Règlement 909;
- ☐ un programme de retraite anticipée/ de réduction des effectifs;
- ☐ la liquidation totale du régime de retraite (répondre aux questions 1 à 6, 11, 21 et 22 seulement);
- ☐ la liquidation partielle du régime de retraite;
- ☐ autre (préciser) _____

MODIFICATIONS CONCERNANT LES PRESTATIONS OU LES COTISATIONS

7. Indiquer si la demande porte sur les éléments suivants (prière de répondre à toutes les questions) :

- | | |
|--|---|
| <input type="radio"/> oui
<input type="radio"/> non | admissibilité au régime..... si oui, répondre à la question 12 |
| <input type="radio"/> <input type="radio"/> | âge normal de la retraite..... si oui, répondre à la question 13 |
| <input type="radio"/> <input type="radio"/> | coordination avec le Régime de pensions du Canada (RPC) ou le Régime de rentes du Québec (RRQ)..... si oui, répondre à la question 14 |
| <input type="radio"/> <input type="radio"/> | taux de cotisation des employés..... si oui, répondre à la question 15 |
| <input type="radio"/> <input type="radio"/> | cotisations de l'employeur..... si oui, répondre à la question 16 |
| <input type="radio"/> <input type="radio"/> | calcul / formule de calcul de la prestation :
dans le cas des régimes qui offrent des prestations déterminées..... si oui, répondre aux questions 17 et 19 |
| <input type="radio"/> <input type="radio"/> | calcul / formule de calcul de la prestation :
gains moyens de carrière..... si oui, répondre à la question 18 |
| <input type="radio"/> <input type="radio"/> | offre d'augmentations automatiques (contractuelles) des pensions en vigueur ou des pensions différées..... si oui, répondre à la question 20 |
| <input type="radio"/> <input type="radio"/> | augmentations ponctuelles des pensions en vigueur ou des pensions différées..... si oui, répondre à la question 8 |
| <input type="radio"/> <input type="radio"/> | convention de gestion financière..... si oui, répondre à la question 9 |

Si la réponse à chacun des éléments susmentionnés est non, passer directement à la page 9 et remplir la déclaration.



Commission des
régimes de retraite
de l'Ontario

250, rue Yonge
29^e étage
Toronto (Ontario) M5B 2N7

DEMANDE D'ENREGISTREMENT D'UNE
MODIFICATION APPORTÉE À UN RÉGIME DE RETRAITE

(Répondre à toutes les questions pertinentes - Prière de dactylographier ou d'écrire en caractères d'imprimerie)

RENSEIGNEMENTS CONCERNANT LA PRÉSENTE DEMANDE

1. Numéro d'enregistrement du régime : _____

2. Nom du régime de retraite : _____

3. Nom de l'employeur ou du promoteur du régime : _____

4. Date de prise d'effet de la modification : _____
année / mois / jour

5. Numéro(s) de la modification ou des modifications visées (en cas de modifications multiples) : _____

DÉCLARATION DE L'ADMINISTRATEUR

Je soussigné, _____, demande par les présentes l'enregistrement du régime de retraite décrit dans la présente formule conformément à la Loi et aux règlements. Je fais cette demande en ma qualité d'administrateur / de signataire dûment autorisé de l'administrateur (encercler la description appropriée) de

(le «régime de retraite».) (nom du régime de retraite)

Sont annexes des copies certifiées conformes des documents qui créent le régime de retraite et la caisse de retraite et en justifient l'existence ainsi que les autres documents qui doivent être déposés aux termes de la Loi et des règlements.

JE DÉCLARE CE QUI SUIT :

1. Les documents déposés en même temps que la présente formule comprennent des copies certifiées conformes des documents qui créent le régime de retraite et la caisse de retraite et en justifient l'existence, et ces documents ainsi que tous les autres documents déposés en même temps que la présente demande sont conformes à la Loi et aux règlements.
2. Je comprends que la responsabilité de faire en sorte que les documents déposés en même temps que la présente formule soient conformes à la Loi et aux règlements incombe à l'administrateur. J'ai rempli cette obligation et je me suis conformé aux dispositions de la Loi et des règlements dans la présentation de la présente demande d'enregistrement.
3. Je reconnais que la présente déclaration s'étend à l'observation des lois sur les régimes de retraite de toute autorité législative désignée à l'intérieur du Canada, autre que l'Ontario, dans les cas où ces lois s'appliquent aux participants et anciens participants au régime de retraite.

Je déclare connaître les obligations que m'impose la Loi en ma qualité d'administrateur du régime de retraite et que le contenu de la présente formule et des documents déposés en même temps qu'elle ainsi que mes déclarations sont exacts, au mieux de ma connaissance et de ce que je tiens pour véridique.

FAIT à _____, le _____, 199__.

Signature du témoin

Signature de l'administrateur ou du signataire autorisé

Nom du témoin (en caractères d'imprimerie)

Nom de l'administrateur ou du signataire autorisé (en caractères d'imprimerie)

Titre/Fonction

Adresse du témoin

Pour les régimes de retraite qui offrent des prestations déterminées, répondre aux questions 27 à 29.

27. Calcul de la prestation

Le calcul des prestations de retraite est fondé sur (cocher la case la plus appropriée) :

- ☐ les gains moyens de fin de carrière pour les _____ dernières années;
- ☐ les gains maximaux moyens pour les _____ meilleures années (des _____ dernières années, le cas échéant);
- ☐ les gains moyens de carrière;
- ☐ une prestation uniforme.

28. Formule de calcul de la prestation - pour les prestations normales de retraite uniquement (ne pas inclure les prestations facultatives ni les prestations de remplacement qui demandent des conditions particulières)

Indiquer le montant ou le taux utilisé dans la formule de calcul de la prestation :

- ☐ % des gains, s'il n'y a pas de coordination avec le RPC/RRQ;
- ☐ % des gains au-dessus du MGAP;
- ☐ % des gains jusqu'au MGAP;
- ☐ \$ par mois pour chaque année de service;
- ☐ \$ par mois pour chaque période de _____ heures de travail;
- ☐ autre (préciser) _____

29. Le document du régime de retraite prévoit-il des augmentations automatiques (contractuelles) des pensions en vigueur ou des pensions différées (p. ex. l'indexation selon l'indice des prix à la consommation)?

- ☐ oui
- ☐ non

24. Coordination avec le Régime de pensions du Canada (RPC) ou le Régime de rentes du Québec (RRQ) : Indiquer si le taux de cotisation ou le taux des prestations est coordonné avec les cotisations ou les prestations du RPC/RRQ :

- ☐ taux de cotisation coordonné avec le RPC/RRQ;
- ☐ formule de calcul de la prestation coordonnée avec le RPC/RRQ;
- ☐ les deux sont coordonnés avec le RPC/RRQ;
- ☐ aucun des deux n'est coordonné avec le RPC/RRQ.

25. Cotisations des employés

Donner le taux de cotisation des employés destinée au coût normal :

- ☐ aucune cotisation d'employé n'est requise;
- ☐ des gains, s'il n'y a pas de coordination avec le RPC/RRQ;
- ☐ des gains au-dessus du maximum des gains annuels ouvrant droit à pension (MGAP);
- ☐ % des gains jusqu'au MGAP;
- ☐ autre (préciser) _____

26. Cotisations de l'employeur

Indiquer le montant ou le taux de cotisation de l'employeur destinée au coût normal :

- ☐ l'employeur paye le solde du coût;
- ☐ % des gains s'il n'y a pas de coordination avec le RPC/RRQ;
- ☐ des gains au-dessus du MGAP;
- ☐ % des gains jusqu'au MGAP;
- ☐ \$ par année;
- ☐ autre (préciser) _____

DONNÉES STATISTIQUES RELATIVES AUX PENSIONS ET AUX RÉGIMES DE RETRAITE

Les renseignements demandés aux questions 20 à 29 doivent être fournis aux fins de la compilation de données statistiques relatives aux pensions et aux régimes de retraite conformément à l'article 97 de la Loi sur les régimes de retraite.

20. Type d'organisation de l'employeur ou des employeurs principaux (cocher la case la plus appropriée) :

☐ une entreprise à propriété unique/une société en nom collectif;

☐ une personne morale;

☐ une association sans but lucratif enregistrée;

☐ un gouvernement, une société ou un organisme municipal;

☐ un gouvernement, une société ou un organisme provincial;

☐ un gouvernement, une société ou un organisme fédéral;

☐ autre (préciser) _____

21.

Quelle est l'activité première du principal employeur/promoteur du régime? _____

22.

Admissibilité au régime de retraite

Préciser la ou les catégories d'employés qui sont admissibles au régime (cocher plus d'une case au besoin, sauf si la case «tous les employés» est cochée) :

☐ tous les employés;

☐ les employés salariés;

☐ les employés rémunérés à l'heure;

☐ les membres d'un syndicat;

☐ les cadres, y compris les «personnes rattachées» au sens de cette expression dans la Loi de l'impôt sur le revenu (Canada);

☐ autre (préciser) _____

23. Âge normal de la retraite

Indiquer l'âge normal de la retraite selon le texte du régime : _____

PARTICIPANTS AU RÉGIME ET TABLEAU DES DROITS D'ENREGISTREMENT

19. Inscrivez ci-dessous le nombre de participants, sans compter les anciens participants, et le lieu de leur emploi par ressort à la date de prise d'effet du régime.

Lieu d'emploi:	Hommes	Femmes	Total
Terre-Neuve			
Nouvelle-Écosse			
Nouveau-Brunswick			
Québec			
Ontario			
Manitoba			
Saskatchewan			
Alberta			
Colombie-Britannique			
Territoires du Nord-Ouest			
Territoire du Yukon			
TOTAL PARTIEL	(total partiel pour les femmes)	(total partiel pour les hommes)	(total partiel pour l'ensemble des participants) = (A)
Ile-du-Prince-Édouard			
Hors du Canada			
TOTALS			

DROITS D'ENREGISTREMENT : Le paiement des droits doit correspondre au montant qui figure en (A) multiplié par 6,15 \$, le paiement minimal étant de 200 \$ et le paiement maximal de 50 000 \$.

6,15 \$ par participant x (A)

\$

Droits exigibles : (minimum 200 \$) (maximum 50 000 \$)

\$

Droits d'enregistrement inclus :

\$

Prière de faire un chèque payable à l'ordre du ministre des Finances et d'envoyer à l'adresse suivante la demande, ainsi que les documents et les droits exigés :

Commission des régimes de retraite de l'Ontario, 250, rue Yonge, 29^e étage,
Toronto (Ontario) M5B 2N7

17. Les documents suivants sont exigés dans tous les cas et doivent être déposés avec la présente formule, à l'exception des cas indiqués (afin que tous les documents et droits exigés accompagnent effectivement la présente formule, cocher les éléments applicables ci-dessous) :

Des copies certifiées conformes des documents qui créent le régime de retraite et en justifient l'existence :

- ☐ une copie certifiée conforme du texte du régime;

- ☐ une copie certifiée conforme du rapport initial d'évaluation, s'il n'a pas déjà été déposé;
- ☐ une copie certifiée conforme de la convention collective, si le régime a été établi conformément à une convention collective de travail.

Des copies certifiées conformes des documents qui créent la caisse de retraite et en justifient l'existence :

- ☐ une copie certifiée conforme du ou des contrats de fiducie;
- ☐ une copie certifiée conforme du ou des contrats de dépôt auprès d'une compagnie d'assurance;
- ☐ une copie certifiée conforme du ou des contrats de rente collective;
- ☐ une copie certifiée conforme des autres types de conventions de gestion financière;
- ☐ une copie certifiée conforme de la déclaration des politiques et des objectifs de placement;

- ☐ une copie certifiée conforme des accords réciproques de transfert qui se rapportent au régime de retraite, le cas échéant;

- ☐ une copie certifiée conforme de la déclaration explicative et des autres renseignements qui doivent être fournis aux participants et aux personnes admissibles au régime de retraite aux termes du paragraphe 25(1) de la Loi (renseignements fournis par l'administrateur);

- ☐ le tableau des droits d'enregistrement et le chèque payable à l'ordre du ministre des Finances, au montant calculé conformément au tableau de la question 19.

18. Les documents suivants sont exigés s'ils s'appliquent au régime (afin de faire en sorte que tous les documents et renseignements applicables accompagnent la présente formule, cocher les éléments ci-dessous; s'ils sont sans objet, inscrire [S/O]) :

- ☐ la liste des nom et adresse de chaque membre du comité de retraite, du conseil de fiduciaires, du conseil, de l'organisme ou de la commission qui est responsable de l'administration du régime de retraite;

- ☐ la liste des nom et adresse de chaque particulier fiduciaire, ou de chaque membre du conseil, de l'organisme, de la commission ou de la personne morale qui est responsable de l'administration d'une caisse de retraite, si elle n'est pas comprise dans la copie certifiée conforme de la convention de gestion financière;

- ☐ la liste des autres régimes de retraite déjà établis par l'employeur;
- ☐ la liste des nom et adresse de chaque employeur participant au régime, conformément à la question 5;

- ☐ la liste des nom et numéro d'enregistrement de chaque régime de retraite antérieur de l'employeur ou des employeurs, conformément à la question 16;
- ☐ autre (préciser) _____

15. suite

d) Donner le nom de la caisse, le nom de la société de fiduciaire/de la compagnie d'assurance/de l'autre organisme qui détient l'actif de la caisse, ainsi que les renseignements suivants :

(nom de la caisse)

(société de fiduciaire/compagnie d'assurance/autre)

(nom de la personne contact)

(adresse postale)

(code postal)

(numéro de téléphone) (poste) (numéro de télécopieur)

AUTRES RÉGIMES DE RETRAITE DONT EST PROMOTEUR/LE PROMOTEUR DU RÉGIME

16. Des participants couverts par le nouveau régime ont-ils participé dans le passé à un autre régime de retraite de la compagnie, y compris une filiale ou une société membre du même groupe?

☐ oui

☐ non

Si oui, donner le nom du ou des régimes antérieurs et leur numéro d'enregistrement, et décrire leur situation actuelle :

RENSEIGNEMENTS CONCERNANT LE FINANCEMENT

15. Arrangement/ convention de gestion financière
- a) Les prestations fournies par le régime sont-elles garanties ou assurées entièrement par une compagnie d'assurance?

☐ oui

☐ non

- b) Si oui, donner les renseignements suivants concernant la compagnie d'assurance :

(nom de la personne contact)

(nom de la compagnie d'assurance)

(adresse postale)

(code postal)

()

(numéro de téléphone)

(poste)

(numéro de télécopieur)

()

- c) Si la réponse à la question 15 a) est non, indiquer quel est l'arrangement/ la convention de gestion financière (et répondre à la question 15 d) :

☐ contrat auprès d'une compagnie d'assurance non entièrement assuré ou garanti;

☐ contrat de fiducie conclu avec :

☐ des particuliers fiduciaires,

☐ une compagnie de fiducie;

☐ société de caisse de retraite;

☐ gouvernement, ou organisme, conseil ou commission constitué en vertu d'une loi pour l'administration d'une caisse de retraite;

☐ autre (préciser) _____

10. a) Le régime a-t-il été agréé par Revenu Canada?

- ☐ oui
- ☐ non

b) Si oui, donner le numéro d'agrément du régime : _____

11. Une convention collective crée-t-elle le régime de retraite ou en justifie-t-elle l'existence?

- ☐ oui
- ☐ non

Si oui, annexer une copie de la convention collective à la présente formule (conformément à la question 17 - documents qui doivent être déposés).

12. Indiquer le type de régime : (cocher la case la plus appropriée)

☐ régime interentreprises

_____ à prestations déterminées,

_____ à cotisations déterminées;

☐ régime à cotisations déterminées;

☐ régime à prestations déterminées;

☐ régime qui offre une combinaison de prestations déterminées et de cotisations déterminées;

☐ autre (préciser) _____

13. Régimes interentreprises ou régimes à coûts négociés

Le régime de retraite est-il un régime de retraite interentreprises qui est établi conformément à une convention collective ou à un contrat de fiduciaire, ou un régime de retraite qui offre des prestations déterminées dans le cadre duquel l'obligation qu'a l'employeur de cotiser au régime de retraite est limitée à un montant ou à un taux fixe indiqué dans une convention collective? (Voir le paragraphe 6(1) du Règlement 909)

- ☐ oui
- ☐ non

14. Le régime de retraite est-il un régime désigné au sens de cette expression dans le paragraphe 1(1) du Règlement?

- ☐ oui
- ☐ non

RENSEIGNEMENTS CONCERNANT L'EMPLOYEUR/LE PROMOTEUR DU RÉGIME

4. Donner le nom de l'employeur/du promoteur du régime et les renseignements suivants :

(nom de l'employeur/du promoteur du régime)

(adresse postale)

(code postal)

(numéro de téléphone)

(poste)

(numéro de télécopieur)

5. Y-a-t-il d'autres employeurs, y compris des filiales ou des sociétés membres du même groupe, dont des employés participent au régime?

☐ oui

☐ non

Si oui, annexer à la présente formule le nom et l'adresse postale de chacun des autres employeurs.

6. Emplois relevant de la compétence fédérale : (emplois inclus)

Des participants au régime sont-ils employés dans le cadre d'une activité qui est régie par la législation fédérale sur les normes de prestation de pension (*Loi sur les normes de prestation de pension*). Ces activités comprennent par exemple le transport interprovincial, les communications, les affaires bancaires et l'emploi dans les Territoires du Nord-Ouest ou le territoire du Yukon.

☐ oui

☐ non

RENSEIGNEMENTS CONCERNANT LE RÉGIME DE RETRAITE

7. Quel est le nom du régime de retraite?

8. Quelle est la date de prise d'effet du régime?

_____ / _____ / _____
année mois jour

9. Quelle est la date de fin d'exercice du régime?

_____ / _____ / _____
mois jour



Commission des
régimes de retraite
de l'Ontario

250, rue Yonge
29^e étage
Toronto (Ontario) M5B 2N7

Formule 1 - Loi sur les régimes de retraite (L.R.O. 1990)
Règlement 909
(Renvoyer l'original avec les droits - conserver le brouillon)

DEMANDE D'ENREGISTREMENT D'UN RÉGIME DE RETRAITE

(Répondre à toutes les questions - prière de dactylographier ou d'écrire en caractères d'imprimerie)

RENSEIGNEMENTS CONCERNANT L'ADMINISTRATEUR DU RÉGIME

1. Donner le nom de l'administrateur et les renseignements suivants :

(Remarque : Si l'administrateur est une personne morale, un conseil ou un comité de retraite, donner le nom de la personne morale, du conseil ou du comité.)

(adresse postale)

(code postal)

(numéro de téléphone)

(poste)

(numéro de télécopieur)

2.

Indiquer si l'administrateur est : (cocher la case la plus appropriée)

☐

un ou des employeurs;

☐

un conseil de fiduciaires;

☐

un conseil, une commission ou un organisme

☐

un comité de retraite;

une compagnie d'assurance;

auquel une loi de la Législature confie
l'administration du régime de retraite.

3.

Si l'administrateur est un comité de retraite, indiquer le nombre de participants qui sont des représentants :

de l'employeur ou des employeurs ou de l'autre personne qui est tenue de
coïncider au régime de retraite pour leur compte;
des participants au régime de retraite.

Nombre total de représentants

À L'USAGE DE LA CRRO SEULEMENT

N° d'enregistrement :

Formule signée :

Documents du régime non reçus :

Droits supplémentaires reçus :

Remboursement effectué :

Vérifiée par :

Introduction

Formules prescrites et instructions

Ce supplément contient toutes les formules prescrites, des spécimens de la Déclaration conjointe de renseignements annuelle et du Certificat de cotisation payable au Fonds de garantie des prestations de retraite, et des instructions sur la façon de remplir ces deux documents. Ce supplément accompagne le numéro du printemps 1995 du *PCO Bulletin* distribué à tous ceux qui sont sur la liste d'envoi. Le but de cette publication est de fournir à tous les intéressés toutes les formules prescrites, et les instructions sur la façon de les remplir, lorsqu'il y a lieu.

La plupart des formules prescrites ont été révisées et remaniées récemment pour réduire la paperasserie et améliorer la conformité avec les règlements et l'efficacité en général. Un supplément semble être la façon la plus efficace de présenter aux praticiens des pensions les nouvelles formules, étant donné la nature et la portée des modifications aux formules 1, 1.1 et 2, ainsi que la création d'une nouvelle formule prescrite, le Certificat de cotisation payable au Fonds de garantie.

Distribution des formules prescrites à l'industrie des pensions

Le but de ce supplément est de fournir aux administrateurs des épreuves standard de toutes les formules prescrites. Nous acceptons la reproduction par photocopieur des formules 1, 1.1, 3, 4 et de la Déclaration de politique de placement afin de satisfaire aux exigences des règlements. Les abonnés au babbillard électronique (BBS) savent qu'ils peuvent obtenir les formules 1, 1.1, 3 et 4 de la PCCO Conférence #149. Veuillez noter que la Commission ne recevra pas de demandes de formules individuelles, exception faite du BBS et du supplément *Formules prescrites et instructions - 1995*. Des copies additionnelles de ce supplément ont été imprimées en prévision de la demande de cette année. On peut en obtenir des exemplaires du ministère des Finances à Oshawa (consultez les pages "Contacts" du *PCO Bulletin* pour les numéros de téléphone).

La Déclaration conjointe de renseignements annuelle et le Certificat de cotisation payable au Fonds de garantie des prestations de retraite sont envoyés aux administrateurs

La Déclaration conjointe de renseignements annuelle et le Certificat de cotisation payable au Fonds de garantie seront préimprimés par ordinateur avec l'identification du régime de retraite, et envoyés aux administrateurs peu après la fin d'exercice du régime. Les administrateurs qui n'auront pas reçu l'une ou l'autre des deux formules préimprimées (la DRA ou le Certificat de cotisation) dans les six semaines qui suivent la fin d'exercice de leur régime de retraite devront téléphoner au (416) 314-0676. Une formule de remplacement sera émise. La Déclaration conjointe de renseignements annuelle et le Certificat de cotisation au Fonds de garantie doivent être remplis, signés, certifiés et délivrés avec les droits requis dans les délais de dépôt prévus au ministère des Finances, Centre des données fiscales, C.P. 620, 33, rue King ouest, Oshawa (Ontario) L1H 8E9.

Date de prise d'effet des formules 1 et 1.1

Les nouvelles formules 1 et 1.1 rentrent en vigueur le 1er juillet 1995. Pour faire les dépôts à partir de cette date, on peut envoyer les formules 1 et 1.1 à la Commission des régimes de retraite de l'Ontario, 250, rue Yonge, 29e étage, Toronto (Ontario) M5B 2N7, à la compétence de l'officier (ou analyste) aux régimes de retraite approprié.

Pénalités pour les retards de production

Tout DRA ou Certificat de cotisation qui n'est pas déposé pour la date d'échéance sera assujéti d'un droit de dépôt de 120% du droit original, plus intérêt. Veuillez consulter le numéro de l'hiver 1995 du *PCO Bulletin* et les articles qui y traitent du calcul de l'intérêt sur les droits exigibles en cas de DRA et de Certificat déposés en retard.

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THE PENSION COMMISSION OF ONTARIO

BULLETIN

CA20N
TR 600
-B 74

Summer 1995

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Pension
Commission
of Ontario

The PCO Bulletin is published by the Pension Commission of Ontario, which is located at 250 Yonge Street, (just south of Dundas Street), 29th Floor, Toronto, Ontario M5B 2N7 (416) 314-0660 fax (416) 314-0650

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* * *

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The *Pension Benefits Act*, R.S.O. 1990, c.P.8, Regulation 909 (as amended), the terms of the pension plan and the policy and practices of the PCO should be considered in determining specific legislative and other legal requirements and professional advice should be sought.

ISSN 1180-1565

Fiduciary Responsibility - A Regulator's Viewpoint, by Professor E. Gillese

The following article is based on a speech given by Professor Eileen E. Gillese, Chair, Pension Commission of Ontario to the CCH Seminar held on Wednesday, May 17, 1995. Professor Gillese teaches pension and trust law at the Faculty of Law, University of Western Ontario and has also practised in these fields.

In a paper presented at a conference on October 13, 1994¹, I explored the question of which members of the pension plan team could be found to be fiduciaries either at common law or under the *Pension Benefits Act*². Although that topic remains important and unresolved, I will not repeat these comments here except to the extent necessary to establish common usage of terminology. Rather, the thrust of this paper will be to explore areas which may expose the administrator to liability for breach of fiduciary obligation and to offer suggestions on how best to avoid such exposure.

Fiduciary Obligations - At Common Law and under the *Pension Benefits Act*

The *Enfield* case highlighted the potential liability that plan sponsors and all those that administer pension plans face. It heightened anxiety within the industry and propelled many into sessions like this. However, before any meaningful discussion of fiduciary responsibilities can take place, it is important that people understand the difference between fiduciary obligations which exist at common law and those created under the pension benefits legislation.

At common law, caselaw has established that a fiduciary relationship exists between two people whenever one person reasonably places trust or confidence in the other or is dependent upon the other in some significant way. The relationship often arises when one person undertakes, for compensation or gratuitously, to act on behalf of another person. Clearly, at common law, those responsible for the administration of pension plans and funds will be held to be in a fiduciary relationship with plan members.

The result of one person being held to be a fiduciary in respect of another is that the first person owes a

duty of loyalty to the other. In the pension plan context, the duty of loyalty translates into an obligation on behalf of those administering the plan to act honestly, prudently, diligently, even-handedly, with strict candour and confidentiality and strictly in the best interests of the plan members. The duty of loyalty precludes those administering the plan from making unauthorized profits, from delegating their responsibilities and from placing themselves in a position of conflict of interest. The prohibition on delegation is ameliorated by subs. 22(5) of the Act which expressly authorises the use of agents:

Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.

For statutory liability to exist for breach of fiduciary obligation, however, the legislation must create (or recognize) fiduciary obligations. Therefore, we must turn to the *Pension Benefits Act* to see what, if any, fiduciary obligations exist for those running pension plans and funds. Primary obligation for the administration of the plan lies with the registered administrator courtesy of subs. 19(1) of the Act which reads as follows:

The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with this Act and the regulations.

It is actually subs. 22(1) of the Act which creates fiduciary obligations as it is that subsection which establishes the standard of care owed by the administrator in fulfilling its obligations:

The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

In setting the standard of care as that to be exercised when dealing with the property of another, the legislature established that an administrator is to be held to a fiduciary standard. The standard of care owed by fiduciaries at common law varies with the importance and degree of dependency. The highest standard owed is that of a trustee; the trustee's standard of care is said to be the duty to take such

¹ Gillese, E.E., "Pension Funds: Who is a Fiduciary?", (The Canadian Institute Conference (same title), Toronto, 1994, ch. I, pp. 1 - 42).

² All references to the Act or pension benefits legislation are to the *Pension Benefits Act*, R.S.O. 1990, c. P.8.

care as an ordinary prudent person of business would take in managing similar affairs of his or her own³. It will be apparent that the legislated standard in subs. 22(1) is higher yet. That fact coupled with the increased skill level set out in subs. 22(2) has led to the view that it will be easier to find an administrator guilty of breach of fiduciary obligation under the legislation than at common law.

Before the *Enfield* case, it was thought that the registered administrator alone was a fiduciary under the Act and that therefore only the registered administrator faced liability under the Act. *Enfield* established, however, that the statutory duties of the administrator created by sections 19 and 22 extend to those individuals who have been delegated to act as the *de facto* administrator of a pension plan. In the *Enfield* case, this resulted in the extension of liability to the Chief Executive Officer, the Vice President of Finance and an outside director.

Because the *Enfield* case is familiar, we won't go through its facts. The question, of course, is how far the reasoning in *Enfield* will be extended to others involved in the running of a pension plan or fund as, arguably, its reasoning could extend to board directors, senior officers, members of pension committees and even, perhaps, senior members of plan departments.

As well, an argument can be made that the combination of subs. 22(5) and (8) of the Act extends fiduciary liability to agents of the administrator where an agent is any person performing an act required to be done in the administration of the pension plan or administration and investment of the pension fund. This view of agency is considerably larger in ambit than is the notion of agent at common law.

Differences in the Breach of Fiduciary Obligation at Common Law or under the Act

The Parties

The parties to a civil action for breach of fiduciary obligations are obvious. The plaintiff is either a plan member or the union, normally. The defendants are whomever they choose to name and it is usually all those with possible liability.

The parties in a quasi-criminal prosecution under the Act are similar to those in a criminal proceeding. Remember, breaches of the Act are offences. In an offence, the parties are the crown acting as prosecutor, and those named in the information which began the proceeding.

The Process

Again, the differences are obvious so long as you appreciate that an action takes place in the civil courts whereas a prosecution under the legislation is quasi-criminal and takes place in provincial court.

Liability and Exposure

At common law, civil liability is limited to an award of damages.

In a quasi-criminal prosecution under the legislation, the court has a number of powers on sentencing as set out in sections 109 and 110 of the Act. The Superintendent, and the Commission, may decide to seek any of those penalties from the court and pursue the enforcement of them where a prosecution results in a conviction.

- 109.-(1) Every person who contravenes this Act or the regulations is guilty of an offence.
- (2) Every person who contravenes an order made under this Act is guilty of an offence. 1987, c. 35, s. 110.
- 110.-(1) Every person who is guilty of an offence under this Act is liable on conviction to a fine of not more than \$25,000.
- (2) Where a corporation is convicted of an offence under this Act, the maximum penalty that may be imposed is \$100,000 and not as provided in subs. (1).
- (3) Where a corporation is guilty of an offence under this Act, an officer, official, director or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in, the commission of the offence is a party to and guilty of the offence and is liable on conviction to a fine of not more than \$25,000.

³ *Speight v. Gaunt* (1883), 9 App. Cas. 1 adopted in Canada in *Fales v. Canada Permanent Trust Co.* (1976), 70 D.L.R. (3d) 257 (S.C.C.).

- (4) Where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an insurance company, the court that convicts the person may, in addition to any fine imposed, assess the amount not submitted or not paid and order the person to pay the amount to the pension fund or to the insurance company. 1987, c. 35, s. 111(1-4).
- (5) An order for payment under subs. (4), exclusive of the reasons therefor, may be filed in the Ontario Court (General Division) and is thereupon enforceable as an order of that court. 1987, c. 35, s. 111(5), *revised*.
- (6) No proceeding under this Act shall be commenced after five years after the date when the subject-matter of the proceeding occurred or is alleged to have occurred. 1987, c.35, s. 111(6).

Types of Commonly Occurring Non-compliance

- Failure to file AIR and PBGF forms.
- Failure to pay AIR fees and PBGF assessments.

Staff have started to systematically monitor both and will enforce the filings and the payment of the fees and assessments including penalties and interest.

- Failure to properly complete the AIR and PBGF forms. Examples of common problems are forms that are not properly certified and failure to complete the funding section (i.e. whether surplus is used to fund).
- Failure to file actuarial reports, financial statements and amendments to SIP&Gs.

The Commission now has the ability to electronically monitor plans to identify delinquent filers and enforce the filings.

- Filing of wind-up reports, applications for transfers of assets, surplus applications, etc. that do not comply with the requirements.

This is a serious problem and has led to an express change in the way in which staff perform their function. Rather than go back and forth with actuaries and other agents, staff will list all the areas of non-compliance once and copy the administrator. If the

defects are not corrected, the report/application will simply be submitted with a report setting out the defects to the Commission or the Superintendent for a decision. I should point out that enforcement action for non-filing, including prosecution, will be taken. This will include cases where a plan administrator has a long record of non-compliance with the filing requirements or there are other areas of non-compliance.

These changes in practice and policy may appear harsh. From the regulator's perspective, however, what we are doing is an express acknowledgement of the structure and intent of the legislation. These areas of non-compliance are squarely within the responsibilities placed upon the administrator. It is the fiduciary responsibility of the plan administrator to file on time and in accordance with the legislation. By re-aligning ourselves along these lines, we will be in the best position to discharge the full range of fiduciary obligations placed upon us as regulators.

Types of Non-compliance Most Likely to Trigger Prosecutions under sections 109 and 110 of the Act

- Failure to remit required employer contributions.
- Withholding employee contributions from payroll but not remitting these amounts to the pension fund.
- Failure to comply with the quantitative requirements for investments.
- Where administrators knowingly put themselves in a conflict of interest position in respect to their duties and/or investments.
- Abuse of expense charges to the pension fund.
- Failure of agents to report non-remittance of contributions.

Practical Suggestions for Avoiding Liability

The Act is very clear that it is the administrator's responsibility to comply. Take responsibility for governance. Use agents but don't rely on them unduly. Remember the principle of non-delegation. There is a role for advisors and agents; make sure that both sides of the arrangement understand who has what responsibilities.

Become familiar with the requirements, responsibilities and obligations of administrators. To assist, the PCO has aggressively pursued a strategy of communicating the information necessary to enable administrators to comply. Read the *PCO Bulletin* and policy releases, prepare a copy of the Policy and Decisions Manuals*, subscribe to the BBS, attend conferences and seminars.

Define the roles and responsibilities of all those directly involved in the administration of the plan and fund. Ensure that decision makers are aware of their legal and functional responsibilities.

Pro-actively monitor staff and agents to ensure they are complying. Ask for regular reports, read them, understand them and ask questions. Allow sufficient time and resources to supervise and monitor.

Good communication must exist among all the players. Hold regular meetings of the body responsible for administration, e.g. Pension Committee to review reports on plan administration, funding, investments, compliance with regulatory requirements. Communicate with plan members. Talk to the regulators too! We have made regulatory processes easier and better by assigning every plan to a specific officer. Get to know your pension officer.

Once a problem is identified or, if you think there might be a problem, talk to the regulator and take immediate steps to comply. If you're in breach make immediate restitution. If you cannot make immediate restitution in full, re-commence making the regular payments immediately.

Administrators - take responsibility for compliance with the Act. It's cheaper, faster and the only secure route to complete fulfilment of your fiduciary responsibilities.

* *The PCO plans to test-market the Policy and Decisions Manuals soon and may offer them for sale later in the year. If you are interested in this hard copy version of PCO published information, please send a one-page fax indicating your interest to Judith Chalmers at 416-314-0650. We will follow-up at a later date with more details.*

Announcements

New Minister of Finance Appointed

On June 26, 1995, Premier Mike Harris announced the appointment of the Honourable Ernie Eves as Deputy Premier, Minister of Finance and Government House Leader. As Minister of Finance, Mr. Eves will have responsibility for the *Pension Benefits Act*.

First elected to the Ontario Legislature in 1981 as the member for Parry Sound, Mr. Eves has practised law since 1972. He became partner in a Parry Sound law firm and was made Queen's Counsel in 1983. Mr. Eves' legislative experience includes having served as parliamentary assistant to the Ministers of Education and Colleges and Universities. He has also served as Provincial Secretary for Resources Development and, in 1985, was named Ontario's first Minister of Skills Development. After the 1985 provincial election, he was appointed Minister of Community and Social Services.

Other government experience includes: Chair of the Public Accounts Committee, Chief Opposition Whip, PC House Leader, a member of the Select Committee on Ontario in Confederation, a member of the Board of Internal Economy. While in Opposition, Mr. Eves held several posts as critic for the following portfolios: community and social services, colleges and universities, native affairs, health intergovernmental affairs, northern development and the office of the attorney general.

Mr. Eves was born in Windsor in June, 1946 and moved to Parry Sound as a teenager. He is married and has two children.

Employer Convicted for Failure to Remit Contributions to the Pension Fund

On March 29, 1995, the Pension Commission of Ontario obtained convictions in the Ontario Court (Provincial Division) in the County of Peterborough against Pierce & Lyons Inc. and against Thomas Lyons, President.

The convictions, against the corporation under subsections 55(2)(a) and 110(3) of the *Pension Benefits Act* R.S.O. 1990, chapter P.8 and against the individual under subsection 110(3), were the result of the employer's failure to remit funds to the pension plan as required by the Act. The plan was contributory and

during the period from October 1, 1991 to July 31, 1992 neither employer nor employee contributions were remitted to the pension fund in spite of the fact that the latter had been deducted from the compensation of the plan members.

As part of the conviction, the employer was required to remit all outstanding employer and employee contributions plus interest.

7 Digit Plan Registration Number and Former PCO Registration Number to be Used During Transition

Where the PBA and Regulations refer to the "provincial registration number" it should now be taken to mean the "new" seven digit plan registration number.

However, for a transition period of about one year, plan administrators and consultants are requested to use the new seven digit plan registration number and the former PCO provincial registration number on all pension plan related documents. Quoting both numbers on statements, notices, correspondence, documents relating to the operation of the pension plan and applications, submissions and filings for example, will be helpful to all stakeholders including regulators and members.

We recommend that documents use the seven digit plan number followed by the former provincial registration number in parenthesis.

Authority for Minister's Forms

O. Reg. 73/95 revoked the use of prescribed forms 1 and 1.1 after June 30 and provided for the substitution of new forms. Subsections 83(1) and (1.1) of the Regulations provides that an application for registration of a pension plan, and an application for registration of a plan amendment "shall be in a form approved by the Minister and provided by the Superintendent, if made to the Superintendent on or after July 1, 1995".

The Minister approved such new forms in March, 1995. The application for registration of a pension plan is referred to as Form 1 and is catalogued as R500-202. The application for registration of a plan amendment is referred to as Form 1.1 and is catalogued as R500-252. Both forms are available on the BBS.

Reminder - New Forms 1 and 1.1 Effective on and after July 1, 1995

Effective on and after July 1, 1995, all applications for registration of a pension plan and for registration of plan amendments must be filed with the new forms prescribed by the Minister of Finance as described in the preceding announcement. Applications for registration of a pension plan or plan amendments filed after July 1, 1995, which do not use the new forms will not be processed.

Administrators are also reminded that applications filed that are deficient in any respect for instance, incomplete or not certified, will not be processed.

Joint AIR - Agreement Between Revenue Canada and the PCO Now Effective

Effective April 1, 1995, an agreement was made among the Ministry of National Revenue, the Ontario Ministry of Finance and the Pension Commission of Ontario to put in place a system for processing the single annual information return which may now be filed by administrators of pension plans with fiscal years ending on or after March 31, 1995. The joint form enables administrators to fulfil the AIR filing requirements for both Revenue Canada and the Pension Commission of Ontario.

Designated Plans - July 1, 1995 Filing Deadline for Maximum Funding Valuations

O. Reg. 73/95 took effect on February 23, 1995. The main purpose of the Regulation was to resolve a conflict between the *Pension Benefits Act* and the *Income Tax Act* (Canada) (the "ITA") regarding the funding of designated plans. This objective was achieved by exempting designated plans from the funding requirements of the PBA with respect to contributions that are not "eligible contributions" as defined in the Regulations under the ITA.

Subsection 14.1 of the Regulations establishes a new reporting requirement. In most cases however, additional filings will not be required. For more information about the new requirements for designated plans, please refer to the article on page 39.

This announcement and the article on page 39 were uploaded to the PCO conference on the BBS on June 15, 1995. All registered and prospective BBS subscribers were notified of the upload by fax. Actuarial consulting firms were also reminded of the deadline by fax.

Administrative Practices

SECTION:	Amendments
INDEX NO.:	A400-500
TITLE:	Reduction of Accrued Benefits and/or Refunds or Payments to Avoid Revocation by Revenue Canada of Registration of a Pension Plan - Exemptions under s. 47 of the Regs
APPROVED BY:	The Pension Commission of Ontario
PUBLISHED BBS:	July 7, 1995
PUBLISHED BULLETIN:	Bulletin 6/2 (Summer 1995)
EFFECTIVE DATE:	June 26, 1995

Administrative Practice

Reduction of Accrued Benefits and/or Refunds of Payments to Avoid Revocation of Registration of a Pension Plan

Section 47 of Regulation 909 was amended effective October 28, 1994 by O. Reg. 665/94. The purpose of the amendment was the resolution of conflicts between the requirements of the *Pension Benefits Act*, the ("Act") and the *Income Tax Act* (Canada) and Regulations, the ("ITA") respecting benefit reductions, refunds of member and/or former member contributions, and payments to an employer.

The federal Minister of Revenue may revoke the registration of any pension plan that permits or provides for, on or after January 1, 1992, contributions or benefits that are in excess of the maximum limits established under the ITA. Subject to satisfaction of the evidence and notice conditions identified in this policy, subsections 47(11) to 47(16) provide pension plans with exemptions from specific sections of the Act.

Exemptions from subsections 14(1), 63(1) and 78(1) of the Act apply only to pension plans which continue to provide for contributions or benefits that are in excess of the maximum limits permitted under the ITA. Exemptions do not apply where a benefit reduction, a refund of contributions to members and former members, or a payment to an employer is needed to avoid any penalty under the ITA other than revocation of a plan's registration.

Exemptions from subsections 14(1), 63(1) and 78(1) are not automatic. The plan administrator must first submit evidence that an exemption is necessary to avoid revocation of a pension plan's registration by Revenue Canada and notice of the benefit reduction, refund and/or payment, as applicable, to the Superintendent.

This policy identifies the documents the Superintendent will expect to receive from plan administrators. Information that is relevant to the exemptions is included under the following headings:

- Evidence and Notice to the Superintendent under subsections 47(12), 47(14) and 47(16) of the Regulations
- Notice under section 26 of the Act
- The Earliest Date a Pension Plan may be Administered as a Plan that is Eligible for an Exemption

Evidence and Notice to the Superintendent under subsections 47(12), 47(14) and 47(16) of the Regulations

1. The following evidence that an exemption is required in order to avoid revocation of the pension plan's registration under the ITA must be provided no later than the date notice is provided to the Superintendent,
 - a) a copy of a letter from Revenue Canada which confirms that the plan is in a revocable position; and

- b) where all of the following information is not provided in a), a letter from the administrator to the Superintendent which identifies, as applicable,
 - i) the specific benefit reduction and/or amount of refund or payment which is being made in order to avoid revocation of the plan's registration;
 - ii) the specific conflict between the plan document and the ITA which gives rise to the necessity to administer a pension plan as a plan that is eligible for an exemption;
 - iii) the provision(s) of the pension plan which do not comply with the ITA;
 - iv) how the amount of refund or payment requested was determined; and
 - v) a statement by the administrator that the amount of any refund or payment not identified in a) is the minimum amount required to avoid revocation of the plan's registration under the ITA.
- 2. Written notice of the administrator's intention to reduce benefits, refund contributions and/or make a payment to the employer, as applicable, must be submitted to the Superintendent 60 days before an amendment is effective, or a refund or payment is made.
- 3. Notice to the Superintendent should include,
 - a) the name of the pension plan;
 - b) the plan registration number;
 - c) the name of the person the Superintendent should contact regarding the submission;
 - d) the specific exemption being sought under section 47 of the Regulations;
 - e) confirmation that the evidence identified in section 1 of this policy is attached or has been submitted to the Superintendent (identify the date that evidence was submitted); and
 - f) confirmation that any plan amendment required to provide for a reduced benefit, a

refund of contributions to members and former members and/or a payment to an employer, as applicable, is attached or has been filed with the Superintendent (identify the date the amendment was filed).

Notice under section 26 of the Act

1. An amendment that provides for a reduced benefit, a refund of contributions to members and/or former members and/or a payment to an employer to avoid revocation of registration of the pension plan under the ITA may be considered an adverse amendment within the meaning of subsection 26(1) of the Act.
2. In accordance with subsection 26(4) of the Act, the Superintendent need not require the transmittal of notices under subsection 26(1) of the Act or by order may dispense with the notice required by subsection 26(3), or both,
 - a) if the Superintendent is of the opinion that the amendment is of a technical nature or will not substantially affect the pension benefits, rights or obligations of a member or former member or will not adversely affect any person entitled to payments from the pension fund;
 - b) if the amendment has been agreed to by a trade union that represents the members; or
 - c) if the amendment is in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement.

The Earliest Date a Pension Plan may be Administered as a Plan that is Eligible for an Exemption

1. A pension plan is not entitled to an exemption until 60 days from the date both notice and evidence are submitted to the Superintendent. Where the evidence submitted does not satisfy the Superintendent that the plan's registration is in a revocable position, a pension plan is not entitled to an exemption until a date specified by the Superintendent.
2. In accordance with subsection 18(1) of the Act, the Superintendent may refuse to register an amendment or to revoke the registration of a pension plan that does not comply with the Act and the Regulations.

SECTION:	Benefits
INDEX NO.:	B100-251
TITLE:	Amendments for Benefit Improvements - Notice and Funding
APPROVED BY:	The Pension Commission of Ontario
PUBLISHED BBS:	July 7, 1995
PUBLISHED BULLETIN:	Bulletin 6/2 (Summer 1995)
EFFECTIVE DATE:	June 26, 1995
REVISED FROM:	B100-250; published in the <i>PCO Bulletin</i> 2/2 (July 1991)

Administrative Practice

Amendments for Benefit Improvements - Notice and Funding

1. An amendment that provides benefit improvements for only specified person(s) or a class or classes of members or former members of a pension plan may be considered an adverse amendment within the meaning of subsection 26(1) of the *Pension Benefits Act* (the "PBA").
2. Pursuant to subsection 26(1) of the PBA, the administrator shall be required to transmit written notice of an adverse amendment to such persons as the Superintendent may specify. Generally, the Superintendent will expect that notice of an adverse amendment that provides benefit improvements to only some members will be given to all members, or in the case of an adverse amendment which benefits only some former members, to all "specified former members".
3. "Specified former members" means, in the case of an adverse amendment which benefits only some former members who are in receipt of a pension, all former members who are in receipt of a pension, and in the case of an adverse amendment which benefits only some former members who are entitled to a deferred pension, all former members who are entitled to a deferred pension.
4. Subject to section 5 below, improvements can be provided to specified persons if the employer pays the cost of the improvements in a lump sum, at the higher of a solvency basis or an ongoing basis.
5. Section 4 above does not apply with respect to any portion of the cost of the improvements that is not an eligible contribution in accordance with section 147.2(2) of the *Income Tax Act* (Canada).
6. The Superintendent considers the issue of notice separately for each adverse amendment. In accordance with subsection 26(4) of the PBA, the Superintendent need not require the transmittal of notices under subsection 26(1) of the PBA or by order may dispense with the notice required by subsection 26(3), or both,
 - a) if the Superintendent is of the opinion that the amendment is of a technical nature or will not substantially affect the pension benefits, rights or obligations of a member or former member or will not adversely affect any person entitled to payments from the pension fund;
 - b) if the amendment has been agreed to by a trade union that represents the members; or
 - c) if the amendment is in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement.

SECTION:	Refund of Employer Overpayment
INDEX NO.:	R350-101
TITLE:	Application under subsection 78(4)
APPROVED BY:	The Pension Commission of Ontario
PUBLISHED BBS:	July 7, 1995
PUBLISHED BULLETIN:	Bulletin 6/2 (Summer 1995)
EFFECTIVE DATE:	June 26, 1995
REVISED FROM:	R350-100; published in PCO Bulletin 3/4 (March 1993)

Administrative Practice

Refunds of Employer Overpayment to Pension Fund

1. Subsection 78(4) of the *Pension Benefits Act* (the "Act") provides for the following:

The Commission may consent to payment out of a pension fund to an employer of an amount not in excess of the amount of an overpayment by the employer into the pension fund or of an amount paid by the employer that should have been paid out of the pension fund, but shall not consent unless the application is made in the same fiscal year of the pension fund as the fiscal year in which the overpayment or the payment occurred.

2. There are certain situations in which an employer may be considered to have over-contributed to a pension fund for the purposes of subsection 78(4) of the Act including, but not limited to situations where:
 - a) the employer contributes on the basis of an actuarial report for which the effective date has passed but a new report is not yet filed; or
 - b) payments have been made directly by an employer which should have been made from the pension fund; or

- c) employer contributions are paid into the pension fund of the wrong pension plan as a result of an administrative error.

In such circumstances, the employer may be considered to have over-contributed notwithstanding that there may be a solvency deficiency or going concern unfunded actuarial liability in the pension plan.

3. The Commission is of the view that in exercising its statutory decision making power under subsection 78(4) of the Act, it has a common law duty of fairness to ensure that sufficient notice of an application has been given to those whose interests may or will be affected by its decision.
4. The Commission is of the view that those parties whose interests may or will be affected by its decision should be those parties identified under subsection 78(2) of the Act.
5. Ordinarily it is expected that notice will be transmitted by personal delivery or first class mail to:
 - a) any trade union that represents members of the pension plan; and
 - b) any advisory committee established in respect of the pension plan.

6. It is recognized that individual notice to members, former members, and any other individuals who are receiving payments from the pension fund may not be practical or reasonable in all circumstances. For example, the requested refund may be relatively small. In such circumstances, notice may be sufficient if it is given by:
 - a) general notice posted in an unrestricted area in the location(s) of employment for members of the pension plan to which the pension fund relates; and
 - b) public advertisement for each former member, and any other individual who is receiving payments from the pension fund; or
 - c) such other method of notice which is acceptable to the Commission in the circumstances.
 7. In the ordinary course it is expected that notice will contain the following information:
 - a) the name of the pension plan and the registration number;
 - b) the review date of the actuarial report provided with the application, if applicable;
 - c) the funding surplus or deficiency on both an ongoing and solvency basis, if applicable;
 - d) the authority for the refund of employer overpayment (in plan text, trust agreement and legislation);
 - e) a statement to advise plan members that submissions concerning the application may be made in writing to the Registrar of the PCO within thirty days after receipt of notice;
 - f) a statement advising interested parties that copies of the actuarial report, if applicable and any other pertinent material filed with the Commission in support of the application may be reviewed at the office of the employer and at the Pension Commission of Ontario (an appointment should be made in advance); and
 - h) information as to how copies of the documents may be obtained.
 8. An application for the Commission's consent to a refund of overpayment to an employer should include:
 - a) certified copies of the notices that were given;
 - b) details of the classes of persons to whom the notices were given;
 - c) the method of distribution of the notices and the date on which each form of notice was given;
 - d) excerpts from the actuarial report(s) which support the applicant's position that an overpayment has been made; and
 - e) evidence of the actual overpayment made.
 9. The applicant will be expected to justify that the notice provided was appropriate and reasonable given the circumstances of the case. The Commission may reject an application if it is not satisfied that notice was appropriate and reasonable in the circumstances.
 10. Where the Commission is satisfied that there are reasonable grounds for an extension of the time limit under subsection 78(4), an extension may be permitted in accordance with section 105 of the Act.
- This policy does not apply to refunds arising from the requirement of the ITA (Canada) to refund contributions to the employer in order to avoid revocation of a pension plan's registration by Revenue Canada. Refunds for this purpose must comply with the requirements of subs. 47(11) to (16), as applicable, of the Regulations under the PBA. Please refer to the policy, catalogued as A400-500, which is published in this issue.*

SECTION:	Surplus
INDEX NO.:	S900-503
TITLE:	Surplus Distribution - The Role of Legal Counsel in Obtaining Written Consent Pursuant to Section 8 of Regulation 909 (Supplemental to S900-501)
APPROVED BY:	The Pension Commission of Ontario
PUBLISHED BBS:	July 7, 1995
PUBLISHED BULLETIN:	Bulletin 6/2 (Summer 1995)
EFFECTIVE DATE:	June 26, 1995
SUPPLEMENTAL TO:	S900-501

Administrative Practice

The Role of Legal Counsel in Obtaining Written Consent Pursuant to Section 8 of the Regulations

An administrative practice for "Applications for Surplus Distribution to an Employer" submitted in accordance with sections 78 and 79 of the Pension Benefits Act and section 8 of the Regulations was published in the summer 1994 issue of the PCO Bulletin. It is catalogued as index number S900-501. This administrative practice, catalogued as S900-503, is supplemental to S900-501.

When some or all of the members, former members and other persons affected by a surplus withdrawal application are represented by legal counsel they may choose to have their legal counsel negotiate an acceptable distribution. This administrative practice governs such situations.

Instead of receiving individual notice of the surplus application under subsection 78(2), those represented by legal counsel may instruct the administrator, through counsel or otherwise, to transmit the notice of application and surplus distribution proposal to their legal counsel. They may also authorize counsel to consent to a surplus distribution proposal on their behalf.

This administrative practice does not establish guidelines respecting the scope of a legal counsel's authority to act on behalf of clients. However, if counsel purports to represent individuals entitled to share in a surplus distribution, the Commission will require counsel to provide the Commission with an affidavit setting out the following:

- the names of the persons represented by legal counsel including a description of their status in the pension plan (i.e. member, former member, other person);
- legal counsel's role in obtaining written consent (eg. negotiate or negotiate and consent);
- where applicable, that the clients instructed the administrator to transmit notice of the application and the surplus distribution proposal to their legal counsel; and
- where applicable, that the clients of the legal counsel authorized the legal counsel to consent to the surplus distribution proposal on their behalf.

SECTION:	Surplus
INDEX NO.:	S900-801
TITLE:	Surplus Attributable to Employer and Employee Contributions on Plan Wind Up - ss. 78(2) of the PBA and ss. 28(5) of the Regs
APPROVED BY:	The Pension Commission of Ontario
PUBLISHED BBS:	July 7, 1995
PUBLISHED BULLETIN:	Bulletin 6/2 (Summer 1995)
EFFECTIVE DATE:	June 26, 1995
REVISED FROM:	S900-800; published in the PCO Bulletin 4/1, (August 1993)

Administrative Practice

Surplus Attributable to Employee and Employer Contributions on Plan Wind Up

The *Pension Benefits Act* provides that an employer who applies to the Pension Commission (the "Commission") for consent to payment of money to an employer that is surplus out of a pension fund must transmit notice of the application, containing the prescribed information, to the parties listed in subsection 78(2) of the Act.

Subsection 28(5) of Regulation 909, R.R.O. 1990, as amended (the "Regulations") provides that:

A notice required under subsection 78(2) of the Act for a plan that is being wound up shall contain, ...

(c) the surplus attributable to employee and employer contributions; ...

The following practice will be followed by the staff of the Pension Commission ("PCO staff") in assessing compliance with this requirement:

1. As a general rule, PCO staff will provide comments to the Commission on the reasonableness of methods used to attribute surplus between employee and employer contributions. Where circumstances warrant, PCO staff may question the method or information used. In all cases, the final decision as to whether clause 28(5)(c) has been satisfied rests with the Commission.

2. The plan actuary should provide PCO staff with:

- a) a detailed description of the method used to determine the surplus attributable to employee and employer contributions;
- b) any information relevant to the attribution method, including information on the actual annual amount of employer contributions and employee contributions remitted since the inception of the plan or prior plan(s), if any, or for such period of time for which this information is available.
- c) a statement by the actuary performing the calculation that, in his/her opinion:
 - i) the data is sufficient and reliable (the data statement could be qualified with an explanation if appropriate), and
 - ii) the method used is reasonable given the Regulations and the Commission's policy.

3. The onus is on the actuary to use a reasonable method. In general, the Commission will not accept an assertion that it is not possible to estimate the amount of surplus attributable to employee and employer contributions. Also, the Commission will not accept a notice which does not contain an estimate of the amount attributable to each. (It should be noted that it is acceptable to show a range of results based on different methods or assumptions, assuming those methods and assumptions are acceptable to the Commission.)

4. Subject to any professional standards established by the Canadian Institute of Actuaries, it is not the intention of the Commission to specify a method that must be used. However, the Commission has in the past requested the actuary to consider:
 - a) that the contributions of all members were considered, not just the contributions of members remaining at the time of plan wind up or surplus withdrawal;
 - b) that the historic fund rates of return were applied to the member contributions;
 - c) that the attribution method used considers events for the life of the plan and not only for part of the period (assuming the data is available or a reasonable approximation for the data can be made). For example, it is not appropriate to consider events just from when the first ongoing surplus was revealed; and
 - d) as a minimum, the surplus attribution method should account for and disclose the following information:
 - i) employee and employer contributions for the life of the plan, or if information for the life of the plan is not available in the administrator's records, since 1966 where longer periods are involved (since this information can usually be obtained from PCO records);
 - ii) fund rates of return (net of expenses is acceptable);
 - iii) previous refunds of surplus to employer(s) or employees.
5. It may be appropriate under some surplus attribution methods to take into account specific events in the life of the plan. In these cases, the actuary should consider all significant events which have a material impact on the surplus in the plan such as:
 - a) annuity purchases (group or individual);
 - b) annuity purchases for less than the value of member contributions accumulated with interest;
 - c) rates of return credited on member contributions over the history of the plan;
 - d) partial wind ups (with respect to surplus and/or other asset distributions);
 - e) benefit enhancements, such as ad hoc adjustments to pensions in pay;
 - f) changes in assets, liabilities and surplus resulting from mergers;
 - g) dividend income (or asset transfers) from predecessor group annuities;
6. In addition to setting out the amounts of surplus attributable to employee and employer contributions, the notice to plan members and others should include the following information:
 - a) there is no generally accepted interpretation of "surplus attributable to employee and employer contributions";
 - b) other interpretations of "surplus attributable to employee and employer contributions" are possible, which may lead to different results;
 - c) there is no one method generally accepted within the actuarial profession of calculating the amount of surplus attributable to employee and employer contributions;
 - d) the amounts of surplus attributable to employer and employee contributions are estimates determined by the actuary retained by (whomever retained the actuary — such as the employer, Joint Board, union, etc.); and
 - e) a detailed description of the method of attribution is available from the plan administrator.

Please note that wherever a reference to "fund rate of return" is used in this policy, an approximation or reasonable proxy may be used in lieu of the fund rate of return if the actual fund rate of return is not available or impractical to calculate. It should also be noted that, generally speaking, employee and employer contribution information may be available at the PCO (subject to section 30 of the Act).

Appendix

The Appendix provides a few examples of methods of allocating surplus attributable to employee and employer contributions that have not caused the Commission concerns, as well as a few examples of methods that have given the Commission concerns. The methods described in sections A & B have been used by actuaries in the past to satisfy the requirements of the Regulations and Commission policy.

It should be noted that the Commission has also not questioned cases where a reasonable approximation of the fund rate of return was used if the fund rate of return was not available. One example of this approach would be to use the returns detailed in the table entitled "Pension Plan Asset Median Returns" from the annual CIA "Report on Canadian Economic Statistics" that is appropriate for the particular asset mix of the pension fund in question.

All of the examples in this Appendix are based on cases which have come before the Commission. The PCO intends to update the Appendix periodically as an inventory of actual cases which have been seen by the Commission is developed. In the examples, dollar amounts, dates and names have been changed to preserve confidentiality.

A Methods Which Meet the Requirements of the Regulations and the Commission Policy in Specific Situations

The following methods have not been questioned and the Commission has concluded that they meet the requirements of the Regulations and the policy in specific situations considered by the Commission. However, for future applications, it is the responsibility of the actuary to ensure that the method is reasonable in the circumstances of a particular application.

A-1 Simple Accumulation of Employee and Employer Contributions Plus Interest

In example A-1 below, a simple accumulation of employee and employer contributions with investment earnings (fund rate of return or a reasonable approximation) from plan inception to the date of surplus determination was used. Any previous surplus refunds to employees/ the employer plus interest must be deducted from their respective accumulations. The accumulated employee contributions as a percentage of total accumulated contributions can be considered to be the proportion of surplus attributable to employee contributions.

Year Ending December 31	Employee Contributions	Employer Contributions	Unit Value Pooled Fund	Employee Accumulated Contributions	Employer Accumulated Contributions
1972	4,435	2,661	5.06	4,435	2,661
1973	5,600	3,350	4.90	9,796	5,868
1974	5,113	3,068	4.78	14,616	8,760
1975	7,347	6,245	5.11	23,242	15,836
1976	8,639	7,281	5.56	34,310	24,833
1977	9,254	7,866	6.11	47,354	35,499
1978	11,397	3,299	7.31	69,245	46,146
1979	151,038	11,663	8.12	92,753	63,544
1980	16,186	9,102	9.75	129,229	86,347
1981	16,342	9,249	9.68	144,486	94,878
1982	20,591	11,654	12.68	213,080	137,766
1983	21,093	11,939	14.04	258,233	165,168
1984	22,362	12,657	16.65	330,589	209,649
1985	23,077	13,061	20.65	435,988	274,728
1986	23,272	1,027	23.18	513,952	309,383
1987	25,804	0	23.47	546,366	313,264
1988	28,279	0	26.39	644,389	352,244
1989	31,325	32,891	27.09	693,332	394,977
	295,155	147,014		63.71% % Attributable To Employees	36.29% % Attributable To Employees

Note: These numbers have come from a case which has been considered by the Commission. The numbers in the example, which is intended to illustrate the surplus attribution methodology, have been altered to preserve confidentiality.

A-2 Accumulation of Employee and Employer Contributions Less Disbursements Out of the Fund

Example A-2, excerpted from a filing which follows, is a variation on method A-1. It also takes into account payments made out of the fund, making reasonable assumptions with respect to the allocation of the employee/ employer proportion of payments made out of the fund:

The Retirement Plan for Non-Union Employees of XYZ Company Limited

Description of the Surplus Attribution Method

The contributions, investment income and benefit payments have been allocated to either the employee or employer accounts based on the historical cashflows between January 1, 1970 and December 31, 1989. It is these three items which develop the amount of assets at December 31, 1989, the date of the partial wind-up. The detailed attribution calculation can be found in Exhibit 1.

The result of this attribution method indicates that 60.14% of the assets at December 31, 1989 are attributable to employer contributions and 39.86% are attributable to employee contributions. The Actuarial Opinion indicates the split of the surplus on this basis. Specific assumptions used in the attribution are detailed below.

In 1978, there was a merger of two plans, both of which could be considered predecessor plans to this plan. At that time, the assets were commingled and all cashflow was merged from that time forward. We combined all cashflows for the two plans back to plan inception in 1970.

For some of the years, custodian statements were not available and the subsequent actuarial valuation report was used. At the end of each year, the market value of assets was balanced to the following year's initial value. The result will not be affected materially by any inconsistencies that arise as a result of this.

Contributions

Contributions, split by employer and employee, were available for most years back to 1970. In instances where the exact split was not available, the actual total contributions were split using the relationship set out for required contributions in the previous actuarial valuation.

Investment Income

The investment income, net of plan expenses, was split for each year based on the employer/employee attribution as at the beginning of the year. Contributions were assumed to be paid at the beginning of each year.

Benefit Payments

The records do not exist to trace the portion of the benefit payouts attributable to employer and employee contributions. The following assumptions were made:

a) Termination - Vested and Non-Vested

The following assumptions were made, based on the very high level of turnover that the employer has historically had in the affected group, as to the portion of the payout attributable to employer contributions of any termination payments:

Payments prior to 1988	0%
1988	5%
1989	10%
1990	15%

The amounts shown in this column were categorized in the custodian's statements and actuarial reports as "lump sum cashouts", "contributions returned" or "separation payments".

b) Transfers

For any funds transferred out of this plan, 25% of the payment was assumed to be attributable to employer contributions and 75% of the payment was assumed to be attributable to employee contributions.

c) Pension Payments

For any funds paid out of the plan as pension payments, we assumed that 50% of the payment was attributable to employer contributions. Tests were performed using the pension calculations for a cross-section of recent retirees. These tests indicated that the portion of the cost of the benefit attributable to employer contributions ranged from 40% to 60%, with the percentage being highest for employees who retire at a young age.

The Retirement Plan for Non-Union Employees of XYZ Company Limited
Description of the Method to Allocate Surplus

EE = Employee ER = Employer

Year	RECEIPTS			DISBURSEMENTS								SHARE OF FUND				
	Employer	Contribution Employee	Investment Income	Expenses	Terminations			Transfers			Pension Payments			Total	ER	EE
					Total	ER	EE	Total	ER	EE	Total	ER	EE			
1970	30,051	19,675	57	0	0	0	0	0	0	0	0	0	0	49,783	30,085	19,698
1971	57,682	41,669	3,601	135	2,495	0	2,495	0	0	0	0	0	0	150,105	89,807	60,298
1972	73,550	49,663	10,359	665	6,309	0	6,309	0	0	0	0	0	0	276,703	169,151	107,552
1973	81,905	62,231	15,668	1,028	9,573	0	9,573	0	0	0	0	220	110	425,685	259,679	166,006
1974	253,999	84,698	29,423	1,498	19,227	0	19,227	0	0	0	0	750	375	772,330	532,068	240,261
1975	138,980	102,587	60,922	2,486	25,074	0	25,074	0	0	0	0	771	385	1,046,487	709,338	337,149
1976	164,594	126,150	83,219	3,150	51,584	0	51,584	0	0	0	0	2,494	1,247	1,363,223	925,014	438,209
1977	259,916	156,929	111,207	3,984	61,496	0	61,496	0	0	0	0	3,669	1,835	1,822,126	1,254,470	567,656
1978	173,190	144,325	176,417	6,326	66,452	0	66,452	0	0	0	0	9,815	4,908	2,233,464	1,536,244	697,220
1979	311,870	258,867	244,258	6,411	74,906	0	74,906	0	0	0	0	25,641	12,821	2,941,501	1,992,047	949,454
1980	261,861	239,186	350,495	7,337	102,702	0	102,702	0	0	0	0	51,720	25,860	3,631,283	2,452,720	1,178,563
1981	351,867	287,881	428,514	8,084	140,372	0	140,372	0	0	0	0	35,667	17,833	4,479,422	3,025,603	1,453,819
1982	108,105	346,579	947,370	0	95,618	0	95,618	18,000	4,500	13,500	71,869	35,934	35,934	5,695,989	3,694,959	2,001,030
1983	184,647	444,609	855,212	0	173,154	0	173,154	18,192	4,548	13,644	108,070	54,035	54,035	6,881,040	4,345,569	2,535,471
1984	107,942	473,801	554,870	110,737	184,038	0	184,038	0	0	0	119,392	59,681	59,681	7,603,517	4,658,873	2,944,644
1985	28,815	463,442	852,017	78,226	201,375	0	201,375	-779	-195	-584	139,433	69,717	69,717	8,529,535	5,066,213	3,463,322
1986	329,942	469,303	1,313,574	79,191	212,594	0	212,594	0	0	0	154,217	77,109	77,109	10,196,352	6,033,065	4,163,287
1987	47,288	510,505	1,947,199	125,670	410,010	0	410,010	55,703	13,926	41,777	201,761	100,880	100,880	11,918,200	7,001,086	4,917,113
1988	3,766	469,001	617,621	198,165	299,039	14,952	284,087	710,174	177,544	532,631	226,754	113,377	113,377	11,574,456	6,936,107	4,638,349
1989	0	447,750	1,655,853	304,633	575,989	57,599	518,390	32,635	8,159	24,476	260,693	130,346	130,346	12,504,110	7,519,577	4,984,532

Note: As of December 31, 1989, 60.14% of the fund was derived from employer contributions.
The calculations and figures are intended to illustrate the surplus attribution methodology.
The figures have been altered to preserve confidentiality.

B Methods Which May Not Meet the Criteria of the Commission's Surplus Attribution Policy

The following are methods that have been submitted to the Commission about which the Commission has expressed concerns or would not meet the criteria of this Policy.

Also, in this case annuities appear to have been purchased for the accrued benefit without comparison to the accumulated employee contributions. This aspect of the annuity purchase should have been disclosed.

B-1 Accumulated Employee Contributions Versus Contributory Liabilities of Plan

Example B-1 (excerpts from letters which follow) uses a method which compares aggregate accrued liabilities with accumulated employee contributions, for members affected by the wind-up only, without

regard to the fund rates of return. Any excess of accumulated employee contributions over and above contributory liabilities is claimed to be the surplus attributable to employee contributions. This method essentially assumes that all employee contributions are first used to provide all plan benefits and employer contributions are then used to top up benefits.

It should be noted that the surplus attribution method and result is only one element of the entire application. In the past, after taking all relevant issues into consideration, the Commission has approved applications for the distribution of surplus even though it has expressed concerns about the method of attributing the surplus between employer and employee contributions.

As a matter of policy, the Commission is uncomfortable with any methodology that assumes contributions are made on a first-in first-out basis (FIFO) or a last-in first-out basis (LIFO).

Excerpt of a Letter from the Administrator of the XYZ Company Limited to PCO Staff

In response to items no. 3 and 4 in your letter of January 10, 1994, the following is the breakdown of assets and liabilities by pre/post plan change:

Assets

		<u>GR-123</u>	<u>GR-987</u>	<u>Total</u>
Termination Value of contract:				
Value of Employee Contributions	(\$)	80,000	0	80,000
Value of Employer Contributions	(\$)	<u>30,000</u>	<u>600,000</u>	<u>630,000</u>
Total Assets	(\$)	110,000	600,000	710,000

Liability

Single Premium Cost (\$) (before improvements)		65,000	320,000	385,000
Improvements - Amendment No. 4				
Class B	(\$)	8,000	15,000	23,000
Class A	(\$)	0	76,000	76,000
Actuarial Fee	(\$)	<u>3,000</u>	<u>3,000</u>	<u>6,000</u>
Total Liabilities	(\$)	76,000	414,000	490,000
Surplus		\$34,000	\$186,000	\$220,000

Please also refer to the letter concerning the XYZ Company Limited, written by the actuary, on the following page acknowledging the surplus attributable to the employees and employer.

Excerpt of a Letter from an Actuary to PCO Staff

Mr. Pension Officer
Pension Commission of Ontario
250 Yonge Street, 29th Floor
Toronto, Ontario
M5B 2N7

Dear Sir:

**Re: Pension Plan for the Employees of XYZ Company Limited
Registration #0000000**

Further to your letter of October 20, 1994, I am pleased to provide a response for certain of the questions posed. The additional items will be addressed by A.N. Administrator of XYZ Company Limited. I have retained the same numbering system as was used in your letter.

You asked that I ascertain that the requirements of the PCO Bulletin August 1993 (Vol 4, Issue 1) were fulfilled.

Under subsection 78(2) of the Pension Benefits Act R.S.O. 1990, c.P.8, as amended, an employer applying for a return of surplus from a wound-up plan must provide notice of the application to the persons specified in that subsection. The notice must contain information prescribed by the Regulations. Subsection 28(5) of Regulation 909, R.S.O. 1990, as amended, requires, among other things, that the notice contain "the surplus attributable to employer and employee contributions".

In my opinion, it is not possible to determine the amount of surplus attributable to employee and employer contributions under the XYZ Company Limited Pension Plan primarily because the plan was funded through the purchase of insured guaranteed annuities. Under this type of funding arrangement, the determination of actual fund rates of return and plan expenses is virtually impossible. Also, there is no standard method of estimating the amount of surplus attributable to employer and employee contributions. Finally, no account is taken of the value of insured coverage such as ancillary benefits provided under the plan that protect against the economic consequences of death, disability or early retirement.

At page 27 of its Bulletin dated August, 1993, Vol. 4, Issue 1 (the "Bulletin"), the Pension Commission of Ontario (the PCO) states "as a matter of policy, the Commission will not accept an assertion that it is not possible to determine the amount of surplus attributable to employee and employer contributions" and will not accept a notice which does not contain an estimate of the amount attributable to each. As a consequence, I have estimated that the surplus attributable to employer contributions as at the wind-up date (July 23, 1986) is \$216,000 or 98.2% of the wind-up surplus. The portion of wind-up surplus attributable to employee contributions is \$4,000 or 1.8%. This estimate was determined using the method described below. In my opinion, the method employed is consistent with sound actuarial principles and practices appropriate for the intended purpose of complying with the Bulletin, having regard to the policy requirements of the PCO under the Bulletin, the fact that there is no standard or generally accepted actuarial method of calculating the amount of surplus attributable to employee and employer contributions, and disregarding terms of the plan relating to surplus and the determination of plan benefits.

Please note that the calculations were prepared on the basis of item 3 of your letter of January 10, 1994 to A.N. Administrator in which you requested a calculation on the basis of treating the prior contributory plan and the revised noncontributory plan as separate entities. It is my opinion that the Act does not anticipate separating

benefits and values under the plan into those attributable to specific periods other than pre and post the various legislation dates. I have also prepared calculations on the basis that the plan is treated as a single entity; on this basis, the surplus attributable to member contributions is nil.

The following is a detailed description of the method employed.

Background

A termination report dated October 15, 1989 (the date of the wind-up) was prepared by Mr. A. Nother Fellow and Mr. Actuary Tobee and was filed with the Pension Commission of Ontario. This report was used by me to identify the employees affected by the partial wind-up and as the basis of identifying the contributions and liability attributable to such employees as at the wind-up date.

Calculation Method

The details of the calculation method used to determine the value of surplus attributable to employee contributions are as follows:

- a) Employee accumulated contributions were redetermined for employees affected by the plan termination by accumulating historical contributions for each such employee using an interest rate of 6%. Historical net fund earnings rates are not available for the plan. The 6% rate has been used in the redetermination of member accumulated contributions as a reasonable approximation to the net fund earnings rate.
- b) Revised plan liabilities as at the August 31, 1987 plan termination date were determined with respect to the employees affected by the plan termination using the valuation basis established for the related report and taking into consideration the redetermined employee accumulated contributions.
- c) Revised accumulations were not considered for those former members who had terminated employment in the normal course of events prior to the plan termination date.
- d) The additional liability resulting from the above calculations amounted to \$4,000 and is the amount which I estimate is the value of surplus attributable to employee contributions.
- e) The estimated value of surplus attributable to employer contributions is necessarily the balance of the total surplus of \$220,000 shown in the plan termination report.

In addition, you asked that I provide comments regarding the guaranteed annuity purchases affected by members who elected to receive a deferred annuity on the plan's termination. The annuity purchases were for the amount of accrued benefit indicated in earlier correspondence with your office, and with a retirement age of 65. The terms of the pension plan with respect to early and deferred retirement are identical to the terms of the Pension Plan. These are indicated in the XYZ Pension Plan, Endorsement No. 2 of the guaranteed Annuity contract GR-123. As a result, all of the benefits accrued to the members prior to the termination date have been provided by either guaranteed annuity purchases or transfer of commuted values.

Yours truly,

A.N Actuary, F.C.I.A.,
ABC Pension and Benefits Consulting Firm

B-2 Various Problems

Example B-2 is one example that uses techniques for which the Commission had concerns with more than one issue. In this example, the following three principles are illustrated.

- a) The actuary should not only consider events in the life of the plan since the last going concern unfunded liability was disclosed.
- b) Actual contributions should be used whenever they are available. Recommended contributions could possibly be used only in circumstances when there are no sources of information which can provide actual contributions.
- c) Interest should be included as part of the analysis.

The following comments illustrate how Example B-1 failed to comply with the policy principles cited above:

- The second paragraph asserts that, "It should be noted that at these times [December 31, 1988 and December 31, 1991] the Plan had a deficit, that is, the value of the assets of the Plan were less than the value of the liabilities of the Plan."

However, on PCO staff examination of the actuarial reports, the December 31, 1991 valuation disclosed that there was a solvency surplus of over \$1,161,000 (compared to an ultimate surplus at the wind up date of \$1,500,000). The December 31, 1988 valuation did not contain a solvency valuation. However, there was a very small going concern deficit which was masked by conservative funding assumptions. Given this information, concerns were raised as to the appropriateness of the assertion that because there was an unfunded liability at a particular date, plan history before that date could be ignored.

If it can be demonstrated to the Commission's satisfaction that market value of assets are less than wind up liabilities at a particular date, then it may be acceptable to account only for plan history from that point onwards.

- The actuary also used recommended contributions from the valuation report as opposed to actual contributions in the analysis. Actual contributions were available in PCO files for all years up to 1991, and these differed materially from the recommended contributions.
- The actuary did not use interest in the accumulations. No mention was made of fund rate of return or interest credited to employee contributions over the period of time in question.

Excerpt of a Letter from an Actuary to PCO Staff

"There is no standard method of calculating the amount of surplus attributable to member and Company contributions. A precise attribution of the surplus to the contributions of the members of the Plan and the Company is possible only with large amounts of detailed information relating to member and Company contributions and the timing of the investment returns of the Plan fund. This information is not available to the Company. The amounts provided in this section are estimates determined by the Plan actuary.

A reasonable approximation of the attribution can be made based upon the recommended Company contribution ratio contained in the actuarial valuations for the Plan at December 31, 1988 and December 31, 1991. It should be noted that at these times the Plan had a deficit, that is, the value of the assets of the Plan were less than the value of the liabilities of the Plan.

The 1988 valuation report recommended that Company contributions be made at the rate of 55% of member contributions. The Company was also required to contribute annually \$22,569 in respect of the liability for the benefits of designated members (who were not required to make their own contributions to the Plan) and \$3,302 to amortize the deficit in the Plan. Using these figures and the expected level of member contributions, Company contributions represented 42.4% of total contributions to the Plan in the years 1989, 1990 and 1991.

The 1991 valuation report recommended that Company contributions be made at the rate of 92% of member contributions. The Company was also required to contribute annually \$36,500 to amortize the deficit in the Plan. Using these figures and the expected level of member contributions, Company contributions represented 62.1% of total contributions to the Plan in 1992.

Taking a weighted average for the period 1989 to 1992 using the percentages of total contributions noted above, Company contributions to the Plan averaged 49.4% of total contributions. On this basis, it might be said that 49.4% of the surplus, or \$741,000 plus investment earnings since December 31, 1992, is attributable to Company contributions and 50.6% of the surplus, or \$759,000 plus investment earnings since December 31, 1992 is attributable to member contributions. A detailed description of the method of allocation is available from the Plan actuary.

It is however, important to remember that the law does not base ownership of pension plan surplus on the arithmetic attribution of the surplus to the contributions of a plan sponsor and the plan members. Rather, ownership of pension plan surplus is determined on the basis of the plan documentation.

Surplus Withdrawal

The Company will request payment to it of 35% of the surplus remaining after an amount equal to 65% of the surplus (approximately \$975,000) has been distributed by the trustees to former members. The distribution of the money by the trustees is conditional upon receiving the approval of the Pension Commission of Ontario to the surplus split. The amount to be paid to the Company will be approximately \$525,000 plus earnings less expenses between September 30, 1994 and the date of payment."

SECTION:	Wind Up
INDEX NO.:	W100-101
TITLE:	Filing Requirements and Procedure
APPROVED BY:	The Superintendent of Pensions
PUBLISHED BBS:	July 7, 1995
PUBLISHED BULLETIN:	Bulletin 6/2 (Summer 1995)
EFFECTIVE DATE:	June 26, 1995
REVISED FROM:	W100-100

Administrative Practice

Pension Plan Wind Up - Filing Requirements and Procedure

The purpose of this administrative practice is to identify the filing requirements and procedure for winding up a pension plan in whole or in part. It is hoped that administrators and their agents will use this information in the preparation of wind-up filings that comply fully with the requirements of the *Pension Benefits Act*, the Regulations and related policies of the Commission. Improved compliance will enable PCO staff to process wind ups more quickly and efficiently.

The material which follows deals with key wind up requirements and procedure. Readers are reminded that the provisions of each pension plan are unique and the circumstances that trigger the wind up of a pension plan are various. Therefore, it is not possible to identify all issues that may be relevant to every plan situation in this paper. It should further be noted that the purpose of the administrative and actuarial guidelines set out in this paper is to assist plan administrators and their agents in the preparation of required wind-up filings and PCO staff in the review of the filings. These guidelines do not preclude the use of other bases if deemed appropriate in the circumstances. It is the responsibility of the administrators and/or their agents to demonstrate that the bases chosen are in compliance with the *Pension Benefits Act* and Regulations.

If administrators and their agents have questions about plan wind ups, they should refer to the relevant sections of the *Pension Benefits Act* and Regulations,

as amended. Additional information may be obtained from published policies and practices of the Commission which deal with related wind-up issues. Policies and practices are intended to clarify how the Act and the Regulations are interpreted in certain situations and to assist administrators and their agents in understanding the requirements of the Act, the Regulations and of the Commission so that full compliance can be achieved.

Plans Excluded

This practice does not deal with multi-employer pension plans, defined benefit pension plans where the obligation of an employer to contribute is limited to a fixed amount set out in a collective agreement, or situations involving a claim against the Pension Benefits Guarantee Fund. Surplus matters are only briefly referenced as administrative practices on this subject have been published previously (see Appendix B for titles and index references for related administrative practices).

Throughout this document, the PBA or Act refers to the Pension Benefits Act, R.S.O. 1990, Chapter P.8 and the Regulations refer to Regulation 909, R.R.O. 1990, as amended.

Although we have tried to be thorough, it is not possible to anticipate and address all wind-up situations. Administrators, therefore, are reminded that the application of the Act and Regulations is subject to the facts of each case. Accordingly, the contents of this administrative practice should not be construed as legal, actuarial or professional advice. Independent professional advice should be obtained if you have a particular interest in any of the matters addressed in this administrative practice.

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Administrators and consultants for pension plans that provide only defined contribution benefits, need only reference sections I and IV.A and subsection 3.1 of this administrative practice. Unless otherwise specified, this administrative practice applies to full wind ups as well as to partial wind ups.

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- 1.2 Legislative Requirements and Current Administrative Practice

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- 2.3 Plan Provisions
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SECTION I - Wind-up Process

For all pension plans, the wind-up process consists of five stages. There is a sixth stage, if surplus remains after basic benefits have been distributed. For most stages, some specific action is required by either the administrator or the employer. Administrators should become familiar with this process in order to avoid delays which occur when a wind-up report or other required filings do not comply with the PBA, the Regulations and applicable policies of the Commission.

1.1 An Overview of the Process

Stage 1 -The employer decides to wind up a pension plan or the Superintendent of Pensions so orders.

The administrator is required to give notice of proposal to wind up the pension plan as identified under subsection 1.2 Legislative Requirements and Current Administrative Practice.

Stage 2 -The administrator files a wind-up report and other wind-up documentation.

The wind-up report is a key document which should include information about the funded status of the pension plan and the proposed methods of allocating and distributing assets.

PCO staff review the submitted wind-up documents. If the documentation is incomplete or deficient, including for instance, not being certified or signed, staff will write to the administrator or the

administrator's agent to request the additional documents or information. Upon receipt and review of the additional documents or information, staff will make a recommendation to the Superintendent as to whether the wind-up report complies with the requirements of the PBA and the Regulations.

Stage 3 -The administrator issues benefit statements.

The administrator provides a statement setting out the entitlement and options (including deemed election) available to each person entitled to a benefit on the wind up of the plan. Depending on the situation, the administrator may decide to wait until after the Superintendent's approval of the wind-up report is received to issue benefit statements (see also stage 4).

Stage 4 -The Superintendent approves the wind-up report or approves the disbursement of basic wind-up entitlements.

If the wind-up report complies with the requirements of the PBA and the Regulations, the Superintendent will approve it. However, if there is a surplus issue to be addressed, the Superintendent will approve only the payment of basic wind-up entitlements until the disposition of the surplus has been determined.

If the wind-up report does not comply with the requirements of the PBA and the Regulations, the Superintendent will refuse to approve it.

Stage 5 -The administrator distributes benefits.

When the administrator receives the Superintendent's letter confirming approval of the wind-up report/disbursement of basic wind-up entitlements, the distribution of benefits can take place in accordance with the wind-up report and the options elected, subject to any restrictions as prescribed.

Stage 6 -The administrator distributes surplus.

If a decision has been made to distribute all surplus available on wind up among plan members, former members or other eligible persons, the formula for distribution should be included in the wind-up documentation.

If the employer intends to withdraw or share the surplus with the members, an application is required to be made to the Commission.

1.1.1. Other Considerations

1) When a Notice of Proposal to Wind Up a Pension Plan Has Been Given

Subsection 70(2) of the PBA requires that once a notice of proposal to wind up a plan has been given, no payments or expenses can be made out of the pension fund until the Superintendent has approved the wind-up report. This restriction would not, however, interfere with the continuation of payment of a pension or any other benefit if the payment began before the declaration of wind up. Also, the administrator or an agent of the administrator may request that the Superintendent authorize payment of other benefits or expenses pursuant to subsection 70(3) of the Act prior to the approval of the wind-up report.

2) Approval of the Wind-Up Report and Distribution of Assets

Once a wind-up report is approved by the Superintendent, assets must be distributed in accordance with the wind-up report. A pension plan wind up is not complete until all assets of the pension fund have been disbursed.

1.2 Legislative Requirements and Current Administrative Practice

1.2.1 Effective Date of Wind Up

Subsection 68(5) of the Act provides that the effective date of wind up cannot be earlier than the date member contributions, if any, cease to be deducted, in the case of contributory pension plans, or in any other case, on the date the notice is given to members. Where a wind up results from a specific event such as plant closure, bankruptcy or purchase and sale, the effective date may not be earlier than the date of the specific event precipitating the wind up unless the requirements of subsection 68(5) have been met prior to that date.

The Superintendent may change the effective date of wind up by order, if in the Superintendent's view, there are reasonable grounds for such a change as provided under subsection 68(6) of the Act. There may be circumstances for which the determination of the effective date of wind up may not be obvious. In such situations, the administrator or agent is encouraged to submit a written proposal justifying the selection

of the effective date of wind up. PCO staff will consider the proposal in light of legislative requirements.

1.2.2 Notice of Proposal to Wind Up a Pension Plan

An employer who intends to wind up a pension plan in whole or in part must give notice of proposal, as required under subsection 68(2) of the Act, to each of the following:

- the Superintendent;
- members;
- former members;
- any trade union(s) (if applicable);
- the advisory committee (if applicable); and
- any other person entitled to a payment from the pension fund.

The notice must contain the information prescribed in subsection 28(1) of the Regulations.

At a minimum, the administrator should provide PCO staff with:

- a certified copy of the wind-up notice;
- a statement outlining who (including any union, if applicable) received the notice; and
- the date the last notice was distributed.

In the event an employer declares bankruptcy or is placed in receivership, or otherwise ceases operations, the administrator or the administrator's agent should notify PCO staff immediately.

1.2.3 Persons Who Must be Included in the Wind Up

When a pension plan is being wound up, all members, former members and other persons entitled to payments from the plan on the effective date of wind up must be included in the wind up. In circumstances where a plan is partially wound up, generally only those members affected by the partial wind up are included.

When a wind up results from an event affecting the employment of the members, such as plant closure, all members affected by the event, who are participating in the plan on or after the date notice of the event is released, must be included as members for the purposes of the wind up. This applies even if a member terminates or is terminated after the notice date but prior to the actual occurrence of the event.

If there has been a series of staggered layoffs prior to and/or after the wind-up date, the administrator or the administrator's agent should submit a written proposal to identify which group of employees, including those who may have terminated prior to the wind-up date and/or may terminate after the wind-up date, will be entitled to wind-up benefits.

1.2.4 Wind-up Documentation

In addition to the notice of proposal to wind up, the following documentation must be filed.

Wind-up Report

The administrator must file a wind-up report pursuant to subsection 70(1) of the Act. The report must be prepared, pursuant to section 15 and subsection 29(1) of the Regulations, by an actuary (i.e., a Fellow of the Canadian Institute of Actuaries) unless it is in respect of:

- a) a defined contribution plan,
- b) a fully insured pension plan established prior to January 1, 1987 underwritten by a contract with an insurance company and that does not require employee contributions, or
- c) a pension plan underwritten by a contract issued by the *Government Annuities Act* (Canada).

Under a), b) or c) above, the report may be prepared by an accountant or a person authorized by an insurance company, a trust corporation or by the Annuities Branch of the Department of Labour of the Government of Canada, responsible for administering the pension plan or pension fund.

Specific items to be included in a wind-up report are set out under subsection 70(1) of the Act. Section III provides further detail to assist actuaries in preparing wind-up reports on pension plans that provide defined benefits.

Amendments, Resolutions and Form 1.1

Appropriate amendments and resolutions which effect the wind up should be filed in conjunction with the wind-up report. The proposals in the wind-up report must conform with the provisions of the plan and amendments.

If an amendment is required, for instance, where there are benefit improvements in conjunction with the wind up, Form 1.1, an Application for the registration of a plan amendment should be included with the wind-up documentation. Form 1.1 (English and French) found on the BBS at index number R500-251 is applicable up to and including June 30, 1995. A new Form 1.1 (English and French) found at index number R500-252 is effective on and after July 1, 1995.

A supplement to the Spring 1995 issue of the PCO Bulletin includes master proofs of Form 1.1 (effective on and after July 1, 1995) in English and French. These forms are intended to be duplicated to meet compliance requirements.

Superintendent's Checklist for Compliance on Plan Wind Up

The administrator should file a completed Superintendent's Checklist for Compliance on Plan Wind Up. This checklist is designed to assist plan administrators and their agents in compiling the required submissions. It also aids PCO staff in their wind-up review. Poorly completed checklists may result in delay of the wind-up process.

Other Required Filings in Respect of a Full Wind-Up

Pursuant to section 29.1 of the Regulations, the administrator must file the following documents within six months after the effective date of wind up for the period from the most recent plan year end to the effective date of wind up:

- an Annual Information Return (AIR)
- financial statements for the pension plan or fund

Within 90 days after the effective date of wind up, the administrator must review the pension plan's Statement of Investment Policies and Goals (SIP&G). Any amendment must be filed within 90 days after adoption of the amendment.

Prior to February 23, 1995, there was a requirement that administrators review the pension plan's SIP&G and file confirmations or amendments. Subsection 68(2) was amended by O. Reg. 73/95 to no longer require administrators to file a confirmation of review of the SIP&G where no change has occurred. On or after February 23, 1995, the administrator is asked, in such a circumstance, to certify on the AIR that a review of the SIP&G has been conducted.

The administrator is responsible for ensuring that all AIRs required up to the effective date of wind up are filed and that all prescribed and outstanding fees and assessments are paid. The administrator is required to comply with these requirements within six months after the effective date of wind up in accordance with subsection 29(4) of the Regulations.

1.2.5 Distribution of Benefits

The administrator is required, under section 72 of the Act, to provide each person entitled to a benefit on wind up with a statement setting out the person's entitlement under the pension plan, the options available and other information as prescribed in subsection 28(2) of the Regulations. The statement should indicate, in accordance with clause 28(2)(t) of the Regulations, that the entitlements and options are subject to the approval of the Pension Commission of Ontario and of Revenue Canada, and may be subject to adjustment.

The Option Statement, Deemed Elections and Timing

A recipient of an option statement has 90 days after receipt of the statement to make an election and forward it to the administrator.

If the recipient fails to make an election within 90 days, that person shall be deemed to have elected to receive an immediate pension, if eligible. If the recipient is not eligible to receive an immediate pension, that person shall be deemed to have elected to receive a deferred pension commencing at the earliest date mentioned in clause 74(1)(b) of the Act. Information pertaining to a deemed election should also be specified in the option statement in accordance with subsection 72(2) of the Act and clause 28(2)(o) of the Regulations.

The administrator must comply with an election made by a person on wind up within 30 days after the later of:

- the receipt of the election, or
- the receipt of notice that the wind-up report has been approved by the Superintendent

subject, however, to the requirements of subsections 29(7) and (8) of the Regulations.

Final Distribution of Assets and Confirmation of the Distribution

Finally, within 30 days after final distribution of assets of the pension plan, the administrator shall give the Superintendent written notice that all of the assets of the plan have been so distributed as required under subsection 29.1(4) of the Regulations.

Transfer of Commuted Values

Effective on June 24, 1994, Regulation 909 was amended by O. Reg. 409/94 to resolve a conflict between the Act and the *Income Tax Act* (Canada) regarding the locking-in of pension benefits in situations where the commuted value of the benefits exceed the maximum amount that is permitted to be transferred from a pension plan on a tax-deferred basis under the *Income Tax Act* (Canada). Under subsection 21(1.1) of the Regulations, members may now transfer the locked-in portion of their commuted values to a LIRA or, where the individual is eligible to retire under the terms of the plan, to a LIF.

That portion of a commuted value that is in excess of the maximum transfer limit under the federal *Income Tax Act* must be transferred to a “regular” (non locked-in) RRSP or a RRIF depending on the option selected for the locked-in portion. The individual may withdraw the unlocked moneys and pay the appropriate tax or, retain the regular RRSP or RRIF as permitted by Revenue Canada. The amount up to the limit imposed by Revenue Canada must continue to be locked-in to preserve funds for retirement.

For further information on this amendment and explanatory notes, please see the Summer 1994 issue of the *PCO Bulletin*.

SECTION II - Preparing the Wind-up Report

A wind-up report filed under subsection 70(1) of the Act must comply with the prescribed requirements of the Act and Regulations. As well, in preparing a wind-up report for a defined benefit plan, subsection 16(1) of the Regulations requires that an actuary “shall use assumptions appropriate for the plan and methods consistent with sound principles established by precedent or by common usage within the actuarial profession and with the requirements of the Act and this Regulation”. Applicable professional standards are set out in the document titled *Standard of Practice for Valuation of Pension Plans* by the Canadian Institute of Actuaries (the “CIA Standards”).

Under subsection 70(1) of the Act, the wind-up report must set out at least the following:

- the assets and liabilities of the pension plan;
- the benefits to be provided under the pension plan to members, former members and other persons;
- the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits; and
- such other information as is prescribed

2.1 Compliance Items

The actuary should confirm compliance with respect to the following legislative requirements, where applicable:

Minimum value of employee contributions with interest for pre-1987 benefits	ss.39(1) & (2)
Minimum 50% cost rule for post-1986 contributions	ss.39(3) & (4)
Early retirement options	s.41
Joint and 60% survivor option	s.44
Full vesting (where plan is fully funded)	ss.73(1)(b)
Grow in rights	s.74
Notice period under Employment Standards Act	ss.74(5)
Deemed consent of ancillary benefits	ss.74(7)
Benefits accrued under all prior plans included in the report	ss.81(2)
Minimum credited interest from date of wind up to date of payment	Reg. ss.24(12)

2.2 Membership Data

The CIA Standards contain the following requirement:

6.01 Report Contents

A. General Requirements

The report on the valuation of a pension plan prepared by an actuary should contain information which will be sufficient to meet the purpose(s) of the valuation and to permit another actuary to make an appraisal of the valuation.

In the past, when reviewing the calculations in wind-up reports, PCO staff have looked at the following information:

For members and deferred vested former members:

- age or date of birth
- sex
- years of continuous service, or date of hire (members only)
- years of credited service (members only)
- years of membership, or date of plan entry (members only)
- date of termination (if different than the effective date of wind up)
- accumulated (pre-1987 and post-1986) employee contributions with interest, if any
- salary upon which the benefits are based, if applicable
- accrued (pre-1987 and post-1986) pension
- bridging benefit, if any
- any other benefits provided under the plan
- commuted values of accrued (pre-1987 and post-1986) pension, bridging and other benefits
- excess contributions due to 50% rule
- additional voluntary contributions with interest, if any

For retired former members and other beneficiaries:

- age or date of birth
- sex
- date of retirement
- amount of pension payable
- bridging benefit, if any
- any other benefits provided under the plan
- form of pension payment
- commuted values of pension, bridging and other benefits

Some or all of this information may be requested by PCO staff in order to complete their review of a wind-up report. Such information should be provided in an anonymous form, i.e., no names, social insurance numbers or other personal identifiers should be provided.

Statistical Summary by Membership Categories

The CIA Standards also contain the following requirement:

2.03 Disclosure of Data Source and Checks

...A summary of the statistics pertaining to the members should also be included in the valuation report in sufficient detail to permit another actuary to be satisfied as to the reasonableness of the valuation results.

Accordingly, the report should provide a summary of statistics for various categories of membership, namely, members, deferred vested former members, retired former members, etc. It is also preferable that the report include a reconciliation of plan membership from the valuation date of the last filed actuarial report.

In the case of a partial wind up, a summary of the statistics pertaining to members who are remaining in the continuing portion of the plan should also be provided. However, if there had not been significant changes in membership since the valuation date of the last filed actuarial report, a reference to that report with respect to the remaining members is generally acceptable.

2.3 Plan Provisions

The report must include a summary of plan provisions that were reflected in the wind-up valuation. The actuary should ensure that the summary is consistent with the plan documents filed with the PCO.

2.4 Commuted Values of Benefit Entitlements

Appendix A sets out the actuarial guidelines that are currently followed by PCO staff in their review of the determination of the commuted values of members' benefit entitlements on wind up. These guidelines do not preclude the use of any other actuarial basis if deemed appropriate by the actuary. However, the actuary should justify the basis used and demonstrate that the commuted values calculated using such a basis would comply with the Act and Regulations.

2.5 Financial Position of the Plan on Wind Up

In addition to the determination of the commuted values of the benefit entitlements of the individual members, the wind-up report must provide information on the financial position of the pension plan as a result of the wind up. Determination and reporting of the financial position of a defined benefit pension plan must comply with the CIA Standards.

Until a formal professional standard governing the wind up of a plan is developed by the Canadian Institute of Actuaries, the following descriptions represent current PCO administrative practices.

2.5.1 Valuation Balance Sheet in Respect of a Full Wind Up

In the case of a full wind up, the report should provide a valuation balance sheet including the assets and the wind-up liability of the plan as of the effective date of the wind up.

Assets

Assets should be valued at market, with adjustments for receivables or payables at the effective date of wind up. The actuary should describe in detail any estimates that were made of market values. In particular, if the actuary has reason to believe that there may be items which might adversely affect the quality of assets, the actuary should disclose this information and quantify the impact, to the extent possible. In making this determination, the actuary may rely on or use the opinion of another person if such reliance or use is justified in the circumstances. Cash out value should be used for insurance company guaranteed annuity contracts and general fund deposit administration contracts.

If expenses are expected to be paid from the fund and the payment of these expenses is permitted under the plan, a reasonable allowance for wind-up expenses should be identified and deducted from the value of plan assets. In determining the wind-up funded ratio of the plan, this net asset value is taken as the numerator in the funded ratio formula.

It is preferable that the report include a reconciliation of plan assets from the valuation date of the last filed actuarial report.

Wind-up Liability

The wind-up liability must reflect all benefits provided under the plan and the applicable legislation on wind up and should be separately summarized for each major category of membership. For members and former members who are expected to receive a commuted value, the wind-up liability must be consistent with the individual commuted values of the benefit entitlements. For members and former members who are receiving or are expected to receive a pension benefit, the wind-up liability should reflect

the approximate cost of purchasing the pension benefits. For this purpose, either a quotation from an insurance company or an estimate based on the interest and mortality assumptions that underlie the CIA transfer value basis is acceptable.

2.5.2 Valuation Balance Sheet in Respect of a Partial Wind Up

In the case of a partial wind up, the report should provide a valuation balance sheet in respect of the wound-up portion of the plan as of the effective date of wind up. The determination of the amount of assets related to a partial wind up must be done on a basis that is appropriate in the circumstances.

Where a plan covers only members with Ontario employment, PCO staff will accept, as matter of practice, the splitting of assets between the wound-up portion and the continuing portion of the plan in proportion to the wind-up liabilities as of the effective date of wind up ("standard method"). Splitting of assets in proportion to going concern or solvency liabilities at the effective date of wind up or at a date other than the effective date of wind up will also be acceptable if the actuary can confirm that, in his/her opinion, such a split would not be materially different than that under the "standard method". If the actuary uses any other basis, then comments supporting the appropriateness of the basis selected should be included in the report.

For the continuing portion of the plan, the actuary should confirm whether the funding requirements as set out in the last filed funding actuarial report would continue to apply or otherwise set out the funding requirements in a separate actuarial cost certificate or funding actuarial report.

2.6 Actuary's Statements of Opinion

The actuary must provide statements of opinion in accordance with the CIA Standards.

SECTION III - Treatment of Surplus/Deficit

The term "wind up" is defined in the Act to mean the termination and distribution of the assets of the pension plan. Therefore, in addition to establishing the benefits to be provided to affected members and former members, the wind-up report should identify any assets remaining after satisfaction of the liabilities (i.e., surplus) or assets shortfall in satisfaction of the liabilities (i.e. deficit).

3.1 Surplus

If the plan is in a surplus position on wind up, the administrator should indicate how the surplus assets will be dealt with. Generally, distribution of assets must conform with the proposals set out in the wind-up report approved by the Superintendent. If the wind-up report does not indicate how the surplus will be dealt with, a supplement to the initial report dealing with surplus assets will be required.

Distribution and allocation of surplus are dealt with in the policies and administrative practices contained in the BBS. Refer to Appendix B which summarizes all other policies relevant to wind up.

3.2 Deficit

If the wind-up report reveals that the plan does not have sufficient assets to pay the liabilities on wind up, the employer must pay into the pension fund amounts required under section 75 of the Act.

The amount of deficit to be funded pursuant to clause 75(1)(b) is the amount by which the Ontario wind-up liability, exclusive of the unfunded portion of non-plan-vested benefits, exceeds the value of plan assets allocated for payment of pension benefits accrued with respect to employment in Ontario. Pursuant to clause 29(9)(a) of the Regulations, where payments are being made in accordance with section 75 of the Act, the employer is not liable to pay the unfunded portion (based on the wind up funded ratio) of non-plan-vested benefits.

If the employer wishes to fund the deficit immediately, the wind-up report may be processed as if the plan did not have a deficit. However, before approval can be given, a commitment from the employer must be obtained to fund on a lump sum basis by a certain date (for example, the date at which wind-up benefits are expected to be settled). In lieu of a lump sum payment, the deficit may be funded in accordance with section 31 of the Regulations by annual special payments over a maximum period of five years commencing at the effective date of wind up (for qualifying plans, by monthly special payments over one year).

The plan administrator is required under section 32 of the Regulations to file a report annually until the employer's obligation under section 75 of the Act has been fulfilled. This annual report must be prepared by an actuary and must satisfy all standards normally

applicable to a valuation report. In addition, the report should provide a gain and loss analysis since the last report filed and specify the special payments required to liquidate the remaining liability obligation under section 75 of the Act.

Subsections 29(7) and (8) of the Regulations set out the restrictions on cash out, transfers and annuity purchases prior to the plan being fully funded.

In the case of insolvency or declaration of bankruptcy, and where there is no funding under section 75 of the Act, all pension benefits may be reduced to the level at which they are funded (based on the wind up funded ratio) according to section 77 of the Act and clause 29(9)(b) of the Regulations.

SECTION IV - Specific Issues Related to Wind Up

In this Section, a few specific issues related to wind ups are discussed. To the extent available, the current administrative practice with respect to those issues is explained.

Section IV.A

4.1 Payments Approved by the Superintendent

Prior to the PCO's review of a wind-up report, the Superintendent may approve, under subsection 70(3) of the Act, various kinds of payments, including the payment of expenses, commencement of monthly pension payments to retirees under a defined benefit plan and purchase of immediate annuities for eligible retirees under a defined contribution plan. Death benefits will also generally be approved if PCO staff are satisfied that the plan would be fully funded.

The administrator may obtain approval from the Superintendent for a payment of expenses out of the plan fund. However, the administrator must ensure that such payment would not contravene section 22 of the Act.

Subsection 70(3) approvals will also be given by the Superintendent for payment of all benefit entitlements once PCO staff have reviewed the wind-up report and are satisfied that all benefits have been provided for properly. However, an outstanding issue related to surplus may remain: either the administrator has not determined how the surplus is to be dealt with or there is a surplus refund proposal that requires the Commission's consent.

Once the wind-up report is approved, all payments must be made in accordance with it.

4.2 Prior Plans and Policies

Prior plans and policies sponsored by the same employer are deemed to be benefits associated with the current plan whether or not the assets were consolidated as set out under subsection 81(3) of the Act. To the extent these apply to members affected by the wind up, such prior plans and policies must also be included for the purposes of the wind up.

4.3 Notice of Termination of Employment

Pursuant to subsections 74(5) and (6) of the Act, membership in a non-contributory plan should include the period of notice of employment required under the Employment Standards Act. The notice period is included for both benefit eligibility and benefit calculation purposes. For contributory plans the members must be given the option to make the required contributions in respect of the notice period in order to have the period included for benefit purposes.

Section IV.B

4.4 Grow in Under Section 74 of the Act

In accordance with subsection 74(1) of the Act, a member, whose age plus service or plan membership equals 55 or more at the effective date of wind up (the “rule of 55”), will be eligible to receive:

- a) an immediate pension, if eligible under the plan;
- b) a pension beginning at the earlier of the normal retirement date under the plan, or the date on which the member would be entitled to an unreduced pension under the plan had the plan not been wound up and the member’s membership continued to that date;
- c) a reduced pension in the amount payable under the plan beginning on the date on which the member would be entitled to the reduced pension under the plan if the member’s membership continued to that date.

The benefit entitlements for the “rule of 55” members must reflect this grow in provision.

Furthermore, pursuant to subsection 74(3) of the Act, if a “rule of 55” member has at least 10 years of continuous service or membership at the date of wind up, the bridging benefits to which the member would have been entitled if the plan were not wound up and if the member’s membership continued, subject to proration under subsection 74(4), must be reflected in the member’s benefit entitlements.

4.5 Treatment of Special Benefits

The treatment of certain special benefits on wind up is outlined below:

- **Consent benefits** must be provided on a plan wind up as required under subsection 74(7) of the Act.
- **Escalated adjustments or indexation** (including adjustments that have not been made) are not considered ancillary benefits. They are part of the pension benefit under the plan, and thus must be included in the wind-up benefits.
- **Early retirement window benefits** should be included to the extent that a member would have become eligible for the benefits prior to the close of the window, had the plan not been wound up and the member’s membership continued.
- **Plant closure benefits and permanent layoff benefits** should be included for wind-up purposes, where the wind up is in conjunction with or accompanied by one of these events.
- **Prospective benefit increases** are not required to be included on plan wind up.

Where applicable, grow in to these special benefits should be provided in accordance with section 74 of the Act.

4.6 Allocation of Assets for Multi-jurisdictional Plans

In the case of a wind up covering members in more than one jurisdiction in which there are insufficient assets to cover all liabilities, the method for allocating assets among the various jurisdictions is prescribed in section 30 of the Regulations. The distribution of assets allocated to another jurisdiction should be dealt with in accordance with the requirements of that jurisdiction.

Appendix A

Guidelines on Actuarial Assumptions and Methods For the Calculation of Individual Commuted Value of Benefit Entitlements on Plan Wind Up

Subsection 29(2) of the Regulations requires that:

If a pension plan is being wound up in whole or in part, the minimum commuted value for the purposes of subsection 73(2) of the Act of a pension, deferred pension or ancillary benefit shall be the amount required to purchase the benefit from an insurance company as of the effective date of the wind up.

For the purpose of subsection 29(2), PCO staff will accept, as a matter of administrative practice, commuted values determined from either of the following bases:

- (1) a bona fide annuity quotation or a certified pricing basis from an insurance company as in effect on the effective date of wind up, or
- (2) the CIA Recommendations for the Computation of Transfer Values from Registered Pension Plans, effective September 1, 1993 (the "CIA Recommendations"), or its predecessors, as in effect on the effective date of wind up.

A.1 Use of Insurance Companies' Quotes

If a quotation from an insurance company is used as the basis for compliance with subsection 29(2) of the Regulations, one of the following criteria should be met:

A.1.1 Bona Fide Annuity Quotation

The quotation is a written bona fide annuity quote. A bona fide quote is a genuine offer to enter into a contract and the offer must have a definite expiry period which includes the effective date of wind up. The specifications for the quote must reflect all benefits available to the affected members and former members, including normal forms, early retirement options, pre-retirement death benefits, indexation, if applicable, and any other benefits such as plant closure, permanent layoff or disability benefits.

The plan administrator must certify that the specifications for the quote reflect the plan benefits provisions as well as the minimum legislative

requirements such as grow in rights, post-1986 50% rule and pre-1987 minimum employee contributions plus interest, etc.

A.1.2 Insurer's Pricing Basis

The commuted values may be calculated using a pricing basis quoted by an insurer provided the following conditions are satisfied:

- the basis includes an interest rate assumption;
- the basis includes an explicit expense assumption;
- the basis includes the mortality table and the method of projection, as applicable; and
- the basis is certified by an actuary employed or contracted by the insurer as the basis that would be used for a bona fide quote for the affected group or a group with similar characteristics as of the effective date of wind up.

In using such a basis, the actuary would also need to make assumptions regarding other factors (e.g., retirement age and unisex mortality basis) as appropriate for the plan.

A.2 Actuarial Guidelines for PCO Staff

If neither a bona fide annuity quotation nor an insurer's pricing basis is used, the following actuarial guidelines will be used by PCO staff in their review of commuted value calculations. These guidelines were developed from the CIA Recommendations.

A.2.1 Interest

For non-indexed pensions and fully indexed pensions, the assumed interest rates should not be higher than the respective rates determined in accordance with the CIA Recommendations.

Partially indexed pensions should be valued using the method as prescribed in the CIA Recommendations.

A.2.2 Mortality

As a matter of practice, the mortality assumption should not be weaker than the 1983 Group Annuity Mortality Table (GAM83) (including a level 10 per cent margin) as published on pages 880 and 881 of Volume XXXV of the Transactions of the Society of Actuaries.

Pre-retirement Death Benefits

If the only pre-retirement death benefit is the commuted value of the member's pension, it is appropriate to assume no mortality before retirement. Otherwise, a full description of how the pre-retirement death benefit, if any, is valued should be provided.

Unisex Table

In compliance with section 52 of the Act, a unisex mortality table must be used to determine the commuted values of post-1986 benefits. The report should state clearly the mix of the male and female rates, and indicate the basis from which the mix is derived, for example, relative to the number of members or liabilities.

For wind ups prior to September 1, 1993, PCO staff will accept the use of unisex rates for pre-1987 benefits. For wind ups on or after September 1, 1993, PCO staff may accept the use of unisex rates for pre-1987 benefits only if the report clearly indicates one of the following:

- unisex commuted values are required under the terms of the plan; or
- the plan document has a provision allowing the administrator to require the actuary to calculate unisex commuted values, and such direction has been provided in writing by the administrator to the actuary.

A.2.3 Retirement Age

The report should explicitly state the retirement age assumption. PCO staff will not accept statements which simply state that there has been compliance with Section 74 of the Act.

Readers are asked to refer to subsection 4.4 of this administrative practice "Grow in Under Section 74 of the Act". For the purpose of section 74, members meeting the "rule of 55" should be assumed to retire at the most favourable retirement age (i.e., the retirement age that produces the highest commuted value).

To be consistent with the CIA Recommendations, if a plan provides that a deferred vested former member has the right to elect an earlier commencement date with a subsidized early retirement pension (i.e., a pension that exceeds the amount which is of actuarial equivalent value to the pension payable at normal retirement age), then the assumed retirement age

should reflect the full value of the subsidy for all members and deferred vested former members, and not just the "rule of 55" members.

A.2.4 Marital Status

If the plan provides for a subsidized joint and survivor normal form, or optional form, or a subsidized surviving spouse pension on death prior to retirement, an assumption should be made with respect to the members' marital status (i.e., proportion married and age difference between spouses).

If the plan provides a death benefit to a person who is the member's spouse at the date of termination of employment, the actual marital status of the member should be used in the computation. If this information is not available, a proportion of at least 80% married should be assumed. If the plan provides a death benefit to a person who is the member's spouse at the date of death and a change in the member's marital status subsequent to the member's termination is relevant to determining an eligible spouse, it should be assumed that there is at least an 80% probability that the member would have an eligible spouse at the time of death.

Where a sex-distinct mortality table is used, female spouses should be assumed to be at least three years younger than their male counterparts. The exact age of a spouse should be used in cases where the member's actual marital status is used.

Where a unisex mortality table is used, a mirror mortality table should be used for the spouse. For example, if the mortality assumption for the member is based on a combination of 80% male mortality rates and 20% female mortality rates, the mortality for the spouse should be based on 20% male mortality rates and 80% female mortality rates. If husbands are assumed to be three years older than wives on average, the assumed spouse's age would be 1.8 years younger than the member, regardless of the sex of the member (80% times 3 plus 20% times -3).

A.2.5 Date of Computation

Individual commuted values of benefit entitlements normally should be calculated as of the effective date of wind up using a basis in effect on that date. If it is intended to use any other computation date(s), the actuary should confirm with PCO staff by submitting a proposal detailing the dates proposed and the supporting reasons before proceeding with the wind-up calculations.

Appendix B

A Summary of Related Wind-up Policies and Administrative Practices with Catalogue References and Publication Dates

A050	ACTUARIAL REPORTS	
-100	compliance with actuarial professional standards	Bulletin 3/4
A200	ADMINISTRATIVE EXPENSES	
-800	payment on wind-up, PBA 1987 ss. 71(2)	Bulletin 1/2
-801	costs for wind up and surplus applications	Bulletin 5/4
-850	PBGF assessment, O. Reg. 708/87 s. 33	Bulletin 2/4
A400	AMENDMENTS	
-900	surplus withdrawal amendments, PBA 1987 s. 79	Bulletin 3/4
A500	ANNUAL INFORMATION RETURN (AIR)	
-205	late filing fees - calculation of interest	Bulletin 5/4
-800	which AIRs required at wind up	Bulletin 4/2
B100	BENEFITS	
-500	settlement of benefits	Bulletin 4/2
N300	NOTICE REQUIREMENTS	
-100	guideline - notice of wind-up of pension plan, PBA ss. 68(2), formerly Policy Stmt I: Notice Requirement	Bulletin 4/2
P200	PENSION BENEFITS GUARANTEE FUND (PBGF)	
-250	late assessment payments - calculation of interest	Bulletin 5/4
P300	PENSION COMMISSION OF ONTARIO (PCO)	
-100	PROCEDURES: applications before the Commission - decision-making process	Bulletin 4/1
-700	pre-hearing conference procedures	Bulletin 4/1
-705	role of presiding officer at pre-hearing conference	Bulletin 5/1
-800	submission deadlines for PCO monthly meetings	Bulletin 4/2
S900	SURPLUS	
-250	court applications - surplus entitlement in wound-up plans, effective Apr 23, 1992	Bulletin 3/2
-253	consent form of filing Commission consent to surplus withdrawal with court, O. Reg. 909, ss. 8(2) & previous regulation ss. 7a(2)(c)	Bulletin 5/2
-300	surplus distribution to beneficiaries as cash on wind up, effective Dec 17, 1992	Bulletin 4/1
-400	partial wind up: identification and administration of surplus, compliance with PBA, ss. 70(6)	Bulletin 5/2
-501	surplus distribution to an employer PBA, s. 78 and 79 and Reg. 909, s. 8	Bulletin 5/2
-502	changes to the surplus application review process, effective on Sep. 1, 1994	Bulletin 5/2
-503	surplus distribution - the role of legal counsel in obtaining written consent (supplemental to S900-501)	Bulletin 6/2
-550	procedures under ss. 7a(2) of O. Reg. 708/87 (grandfathering provision)	Bulletin 3/2

-600	court & PCO procedure for application under ss. 7a(2)(c) - O. Reg. 708/87, effective Aug 30, 1991	Bulletin 2/3
-750	remaining in a wound-up plan	Bulletin 4/1
-800	attributable to employer/employees, PBA ss. 78(2) & O. Reg. 909 ss. 28(5), effective Jun 14, 1993	Bulletin 4/1
-801	attributable to employer and employee contributions on plan wind up	Bulletin 6/2
-900	allocation of surplus distributed to members and former members on wind up	Bulletin 4/3
W100	WIND UP	
-105	conditional wind-up application not permitted	Bulletin 5/4
-110	credited service for Employment Standards Act notice period	Bulletin 5/3
-125	employer intention respecting surplus in a wind-up report	Bulletin 2/2
-150	defined benefit plan - Superintendent's checklist for compliance on plan wind up	effective Jun 6, 1991
-151	defined contribution plan - Superintendent's checklist for compliance on plan wind up	effective Jun 6, 1991
-200	filing deadlines, O. Reg. 629/92, effective Oct 9, 1992	Bulletin 3/3
-225	vesting, locking in & growing in on wind up	Bulletin 3/2
-230	individual statement at wind up, O. Reg. 909, ss. 28(2)(t), O. Reg. 629/92	Bulletin 3/3
-275	plan with no members, PBA s. 68	Bulletin 3/1
-301	notice of proposal for partial wind up, PBA ss. 68(2) and (3), effective Jun 24, 1993	Bulletin 4/1
-302	notice and consent requirements on partial wind up, PBA ss. 68(2) & (3), 78(2), 79, 112(3), O. Reg. 909 ss. 8(1)(b)(iii)	Bulletin 4/1
-435	payment of immediate pensions	Bulletin 2/4
-450	significant numbers of members, PBA 1987 ss. 70(1)(d)	Bulletin 1/3
-460	where employer sells, assigns or transfers the business	Bulletin 5/3
-800	successor plan does not preclude wind up of original plan	Bulletin 5/4

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The Use of Derivatives in Pension Funds

The article below has been prepared by the members of the PCO Investment Advisory Committee in order to inform plan administrators and other interested parties about the use of derivatives by pension plans. The views expressed in this article are those of the members of the PCO Investment Advisory Committee. They do not necessarily reflect those of the Pension Commission of Ontario or the Superintendent of Pensions. Readers who have a particular interest in any of the matters addressed in the article should obtain independent professional advice.

A number of high-profile losses involving derivatives have recently moved this subject from the business section of newspapers to the evening news headlines. Since Canadian pension funds are legally empowered to trade in derivatives and some of them are quite active participants in this market, the PCO Investment Advisory Committee felt it was appropriate to address this issue. At this time, the Committee would like to offer perspective and advice to administrators confronted with the decision of whether or not to use derivatives in the management of the assets under their care.

Simply stated, a derivative is a contract between two parties where payments between the parties are dependent upon price movements in some underlying asset, index or financial rate. Although the final strategy may be quite complex or exotic, the Group of 30 (a Washington-based organization of senior bankers and other market participants) concluded that "derivatives by their nature do not introduce risks of a fundamentally different kind or of a greater scale than those already present in financial markets."

Derivatives have been around for quite some time and account for over half of all the trading in global financial markets. Whether or not they realized it, most people use derivatives to manage their own financial affairs. For instance, the purchase of fire insurance on a home is equivalent to the purchase of a put option. Few if any of us believe that this service should be eliminated because of perceived abuses. Similarly, farmers, oil refiners and chocolate makers commonly buy and sell futures to decrease their business risks.

As with traditional stock and bond investments, derivatives do not guarantee a profit on every transaction. We should not therefore conclude that derivatives should be avoided simply because some market participants have experienced heavy losses. As is the case for traditional investments, success should be assessed against the strategy's objective and over a time horizon of sufficient length to provide proper perspective. When losses are experienced, it would also make sense to relate them to the scale of underlying operations.

It should be recognized that derivatives are often used as a mechanism to hedge other risks in which case their impact cannot be judged in isolation. For instance, a cereal grower can buy puts on grain in order to protect a profit irrespective of future price movements. Should prices rise, he will lose money on the puts just as a car owner loses his insurance premium when he "fails" to have an accident.

For the most part, "headline" derivatives losses have been the result of excessive leverage in speculative trading programs. While derivatives do lend themselves to the use of leverage, the two are not necessarily linked. Typically, pension funds that use derivatives avoid the use of leverage. Yet, leverage in more traditional investment programs does exist, for example, the use of mortgages in real estate funds.

The most widely used strategies using derivatives in pension funds are neither hedging nor speculation. Rather they are extensions of the investment function. Derivatives can be combined with other instruments to create new and more diversified portfolios but that have risk and return profiles similar to more traditional investments.

While misperceptions do exist regarding derivatives, we should recognize that they do, like all investment vehicles, have features that can make them hazardous if used imprudently or if used by the uninitiated. The Investment Advisory Committee strongly recommends that plan administrators, being required to be prudent, address at least the following seven issues to their satisfaction before authorizing the use of derivatives.

1. **strategy:** the objective of the derivative strategy should be clear to all parties;
2. **instruments:** the specific derivatives to be used for the strategy should be identified clearly;
3. **sources and magnitude of risks:** sources of risk should be identified and implications of adverse events should be understood. This would include, for example, the impact of adverse changes in the price of the assets underlying the employed derivatives and the possible failure of counterparties to perform as contracted;
4. **leverage:** the use of leverage should be strictly controlled (by establishing the amount of cash backing the derivatives position, for example);
5. **pricing:** the market value and notional value of the positions in derivatives should be priced according to a methodology accepted by all parties;
6. **monitoring:** the fund manager should monitor the marked-to-market positions and values at appropriate intervals, which may be daily; and
7. **expertise:** the people entrusted to manage and implement the derivatives program should have the appropriate derivatives expertise and be subject to strict internal risk reporting and control.

Finally, the Investment Advisory Committee recommends that the policy guidelines and restrictions governing the derivatives strategy be documented.

Designated Plans - Requirements for Maximum Filing Valuations

This article explains the requirement for filing a maximum funding valuation. Please also refer to the announcement on page 7.

Subsection 14.1 of the Regulations establishes a new reporting requirement for designated plans. Subsection 14.1 states:

In most cases additional filings will not be required. The general principle behind the new subsection is that if a report has been filed with the Minister of National Revenue ("MNR") it must also be filed with the PCO. The PCO will assume that the administrator is complying with the requirements of the ITA.

It should be noted that the Regulations specify that only reports containing a maximum funding valuation ("MFV") that have been "filed with the Minister of National Revenue" must be filed with the PCO before July 1, 1995. The only situation where this will be required is if the MFV report has already been filed with the MNR, but not with the PCO before July 1, 1995.

More specifically, the requirements of subsection 14.1 are as follows:

- If a MFV was performed in the most recent funding report, and the same report has already been filed with both the PCO and MNR, no additional filing will be required.
- If a MFV was included in the most recent report and that report was filed with MNR, but not the PCO, the report must be filed with the PCO no later than July 1, 1995. This should be the only circumstance in which an additional filing will be required.
- If for any reason, the most recent report filed with the MNR does not contain a MFV, no additional filing will be required with the PCO. For example, it is possible that the most recent report filed with the MNR did not contain a MFV because the effective date of the last valuation was prior to the effective date for which an MFV is required under the ITA. It is also possible that Revenue Canada has accepted an assertion by the actuary that the recommended contributions are "eligible contributions" and that an MFV is not required. Again, however, the PCO will assume that the administrator is complying with requirements of the ITA.
- In brief, if the most recent report filed with the Minister of National Revenue contains a MFV, a copy of that report must be filed with the PCO.

If there is any uncertainty as to whether an additional filing is required prior to July 1, please contact Jerry Loterman of the Actuarial Services Branch at (416) 314-0561. Further information will follow with respect to designated plans which will outline the interaction of the designated plan regulations and professional actuarial standards. Questions regarding the requirements of the ITA should be directed to Revenue Canada, Taxation.

This article and the announcement on page 7 were uploaded to the PCO conference on the BBS on June 15, 1995. All registered and prospective BBS subscribers were notified of the upload by fax. Actuarial consulting firms were also reminded of the deadline by fax.

Update to the Index of PCO Published Information

This summary includes recent material taken from this issue and the *PCO Bulletin*, Spring 1995 issue.

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Superintendent of Pensions Notices/Orders

Notices of Proposal to Make an Order

Please note that, except as otherwise indicated, the "PBA" refers to the Pension Benefits Act, R.S.O. 1990 c.P.8 and the "Regulations" refer to Regulation 909, R.R.O. 1990, as amended under the PBA.

We have introduced the use of the seven digit plan (registration) number (the "PN") along with the former provincial registration number. Please note that the use of "PN" as a prefix is for convenience only. It does not form any part of the plan's registration identification. Readers will notice that certain plans do not have the seven digit plan number. The reason for this is that most of these plans were in the process of winding up and our records were being closed when the conversion was introduced. In a few instances, plan numbers are expected soon from Revenue Canada.

The Superintendent, pursuant to subsection 89(5) of the PBA [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) The Spectrum Pension Plan, PN 0421578 (C-100214), (effective between August 23, 1991 and December 31, 1992), March 8, 1995
- 2) The Spectrum Pension Plan (C-15992), (effective between August 23, 1991 and August 31, 1994), March 8, 1995
- 3) The Spectrum Pension Plan, (C-14462), (effective between August 23, 1991 and December 31, 1993), March 8, 1995
- 4) Imperial Oil Limited Retirement Plan (1988), PN 0347054 (C-8884) and Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., (C-4280), (partially wound up effective between February 4, 1992 and March 16, 1995), March 16, 1995
- 5) Registered Pension Fund for Employees of Ashton-Potter Limited, PN 0219394 (C-5941), (effective March 31, 1993), March 16, 1995

- 6) Registered Pension Plan for Employees of McEndon Limited and Participating Affiliates, PN 0968131 (C-103285), (effective June 30, 1993), April 5, 1995
- 7) Erie Industries (1987) Inc. Employees Retirement Plan, PN 0577320 (C-14511), (effective July 13, 1993), April 11, 1995
- 8) Westinghouse Canada Inc. Pension Plan, PN 0348409 (C-10579), (partially wound up effective October 1, 1992), May 2, 1995
- 9) Westinghouse Canada Inc. Pension Plan, PN 0348409 (C-10579), (partially wound up effective August 11, 1994), May 2, 1995
- 10) Westinghouse Canada Inc. Pension Plan, PN 0348409 (C-10579), (partially wound up effective June 30, 1991), May 2, 1995
- 11) Retirement Plan for Employees of The Alger Press Limited, (C-12322), (effective June 4, 1993), May 5, 1995
- 12) Pension Plan for Salaried Employees of Carpita Corporation and Subsidiary and Affiliated Companies, PN 0598425 (C-15303), (effective June 29, 1990), May 23, 1995
- 13) Pension Plan for Branch Hourly-Rated Employees of King Equipment Manufacturing Corp, PN 0340257 (C-3156), (effective February 26, 1993), June 7, 1995
- 14) The King Equipment Manufacturing Corp. C.A.W. Retirement Income Plan, PN 0340265 (C-3157), (effective February 26, 1995), June 7, 1995

Orders - Section 69 of the PBA

The Superintendent issued Orders, pursuant to section 69 of the PBA [Wind-up Orders], as follows (effective date of wind up and date of order indicated, respectively):

- 1) Pension Plan for the Employees of Cathcart Truck Lines (Toronto) Limited, (C-12193), (effective January 11, 1993), April 6, 1995

Tribunal Activities

This section summarizes matters related to the Pension Commission of Ontario.

1995 Dates for Commission Meetings and Submission Deadlines

The Pension Commission will convene on the following Thursdays in 1995 (submission deadlines are noted in parenthesis). All submissions should include the seven digit plan number and the former provincial registration number.

June 29 (was March 30, 1995), July 27 (was April 27, 1995), September 28 (was June 29, 1995), October 26 (July 27, 1995), November 23 (August 24, 1995), and December 14 (September 14, 1995).

PCO Board Members

The following members comprise the Commission:

Eileen E. Gillese, Chair
Monica J. Townson, Vice Chair
Darcie L. Beggs
Shiraz Y.M. Bharmal
Kathryn M. Bush
Donald G. Collins
C. S. (Kit) Moore
Al Seymour
Joyce A. Stephenson

- 2) Pension Plan for the Employees of Value Home Fashions Inc., (C-15398), (effective June 30, 1994), April 7, 1995
- 3) Registered Pension Fund for Employees of Ashton-Potter Limited, PN 0219394 (C-5941), (effective March 31, 1993), April 7, 1995
- 4) The Spectrum Pension Plan, (C-14462), (effective between August 23, 1991 and December 31, 1993), May 1, 1995
- 5) The Spectrum Pension Plan, PN 0421578 (C-100214), (effective between August 23, 1991 and December 31, 1992), May 1, 1995
- 6) The Spectrum Pension Plan, (C-15992), (effective between August 23, 1991 and August 31, 1994), May 1, 1995
- 7) Registered Pension Plan for Employees of McEndon Limited and Participating Affiliates, PN 0968131 (C-103285), (effective June 30, 1993), May 12, 1995
- 8) Erie Industries (1987) Inc. Employees Retirement Plan, PN 0577320 (C-14511), (effective July 13, 1993), May 17, 1995

Orders - Section 87 of the PBA

The Superintendent issued Orders, pursuant to section 87 of the PBA, requiring immediate compliance with section 75 of the Act, sections 31 and 32 of Regulation 909, R.R.O. 1990, as follows:

- 1) Corewall Inc. and Trac Industries Inc. re Pension Plan of Corewall Inc. for W. Don Paton, PN 0690925 (C-103167), May 25, 1995

Tribunal Questions and Answers

A new column appeared in the Spring issue of the PCO Bulletin entitled, "Tribunal Questions and Answers". This column is designed to provide a venue for people with an interest in the Commission's role or questions about Commission procedures. We welcome any questions about procedures, the adjudicative functioning of the Commission or, the function and role of the Registrar. Questions should be sent to the Registrar or the Chair and identified as intended for the PCO Bulletin "Questions and Answers" column.

Q. When making an application to the Commission, does the applicant need to supply full copies of all supporting documents or will excerpts be sufficient?

A. In making an application, normally excerpts will be acceptable provided that they constitute full disclosure of all relevant provisions. If interpretation issues arise, you will be advised if the Commission requires full documents. See the administrative practice S900-501.

Q. Does the Commission re-consider or re-hear applications where a decision has been given previously?

A. As a general legal proposition, a quasi judicial tribunal such as the Commission has no power to reconsider a matter once it has rendered a decision. Technically, the Commission is *functus officio* once it has decided a matter. However, if a new application is made, it is acceptable to refer to the previous documents filed with the Commission. In such cases, the applicant should advise the Registrar immediately following release of a decision that a new application will be made which will rely on previous documents. In this way, filed documents can be saved and referred to later.

The legal term, *functus officio* means that, having discharged one's duty or power, one's function is complete. Thus, once a magistrate has convicted a person charged with an offence before him, the magistrate is *functus officio*, and cannot rescind the sentence and re-try the case.

Q. Sometimes in the report on "Hearings Before the Commission", the expression *sine die* is used. What does it mean?

A. This is a legal term which is taken from the Latin. A legislative body adjourns *sine die* when it adjourns without appointing a day on which to appear or assemble again.

Hearings Before the Commission

Exide Canada Corporation Retirement Plan No. 1 for Hourly Employees (C-18558)

Request for a hearing with respect to a complaint by Msrs. Gladish and Rosen relating to the approval by the Superintendent of Pensions of a wind-up report in respect of the Exide Canada Corporation Retirement Plan No. 1 for Employees. The application was withdrawn at the request of the applicants and concurred in by the parties.

Imperial Oil Limited Retirement Plan, PN 0347054 (C-8884) and Pension Plan for Employees of McColl-Frontenac Inc., PN 0344002 (C-4280) (the "Plans")

Counsel for a group of former employees is appealing, under s. 89 of the PBA, the Decisions of the Superintendent of Pensions dated May 7 and 18, 1993 to register an Amendment of August 1991 to Section 4.3 of the Plans. A pre-hearing conference was held October 28, 1993 and adjourned sine die. The pre-hearing conference was reconvened November 18, 1994 at the request of the applicant. A hearing into the question of jurisdiction was held March 2, 1995. The panel has decided that the Commission has the jurisdiction to hear the matter. Reasons are printed at page 52 of this issue of the PCO Bulletin. A hearing was held on May 23 and 24, 1995. Oral argument is scheduled for July 20 and 21, 1995.

Imperial Oil Limited Retirement Plan, PN 0347054 (C-8884) and Pension Plan for Employees of McColl-Frontenac Inc., PN 0344002 (C-4280) (the "Plans")

Request by Imperial Oil for a hearing with respect to the proposed Order of the Superintendent of Pensions dated March 16, 1995 regarding a partial wind up of the above plans. A pre-hearing conference has been scheduled for June 22, 1995.

Public Service Pension Plan, PN 0208777 (C-6672)

Appeal by Ontario Public Service Employees Union ("OPSEU") to the Commission re the refusal by the Superintendent of Pensions to make an order requested by OPSEU that the Ontario Pension Board and Management Board Secretariat provide all members of the Public Service Pension Plan with 1992 annual statements by March 31, 1994. AMAPCEO will continue the hearing in the place of OPSEU. Pre-hearing conference held April 14, 1994 and continued June 16, 1994. Prof. Gillese, presiding. AMAPCEO is awaiting information from the Ontario Pension Board concerning steps being taken to confirm plan data.

Once this information is obtained, AMAPCEO will contact the Registrar regarding their position as to manner of proceeding.

Pension Plan for Designated Executive Employees of Libbey-St. Clair Limited, PN 0692756 (C-103741)

The Commission considered the application to issue a Notice of Proposal pursuant to subsection 90(1) of the Pension Benefits Act, that the Guarantee Fund applies to the Pension Plan for Designated Executive Employees of Libbey-St. Clair Limited, PN 0692756 (C-103741), at its meeting of November 17, 1994. The Commission deferred making a decision pending a complete staff review of the wind-up report.

Westinghouse Canada Inc. Pension Plan, PN 0348409 (C-10579)

Request for a Hearing by Westinghouse Canada Inc. pursuant to three Notices of Proposal to Make an Order requiring the plan be wound up in part effective October 1, 1992, August 11, 1994, and June 30, 1991. The Commission has requested submissions with respect to a request for an adjournment pending the outcome of the GenCorp decision.

**Commission Decisions -
Applications Approved Since January, 1995**

Applications under clause 8(1)(b) of the Regulations and subsection 78(1) of the PBA - Surplus Withdrawal on Plan Wind up

At the Commission meeting held February 23, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) Pension Plan for Employees of The Mentholatum Company of Canada, Limited, PN 0275396 (C-6302)

Payment of surplus to The Mentholatum Company of Canada, Limited, from the Pension Plan for Employees of The Mentholatum Company of Canada, Limited, PN 0275396 (C-6302), in the amount of \$440,000 as at December 31, 1990, plus investment earnings thereon to the date of payment, less expenses of 6% of the surplus.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

b) Pension Plan for Executive Employees of Beacon Capital Corporation, (C-102293)

Payment of surplus to Beacon Capital Corporation from the Pension Plan for Executive Employees of Beacon Capital Corporation, Registration Number C-102293, in the amount of \$9,694 as at January 31, 1992, plus investment earnings thereon to the date of payment.

c) Pension Plan for Executive Employees of Brown Baldwin Nisker Limited, (C-15537)

Payment of surplus to BBN James Capel Inc. (formerly Brown Baldwin Nisker Limited), from the Pension Plan for Executive Employees of Brown Baldwin Nisker Limited, Registration Number C-15537, in the amount of \$282,678 as at September 30, 1992, plus investment earnings thereon to the date of payment, estimated to be \$185,192 as at May 19, 1994.

At the Commission meeting held March 30, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

The Retirement Benefit Plan for Employees of Toronto Bowlerama Limited and Affiliated Companies, PN 0365700 (C-12620)

Payment of surplus to Toronto Bowlerama Limited and Affiliated Companies, from The Retirement Benefit Plan for Employees of Toronto Bowlerama Limited and Affiliated Companies, PN 0365700 (C-12620), in the amount of \$152,410.77 as at December 31, 1991, plus investment earnings thereon to the date of payment and less investment expenses. At December 22, 1994, the surplus was estimated to be \$88,472.81.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting held April 27, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) Retirement Plan for Treasury Employees of Tri-Clover Canada Ltd., PN 0271668 (C-3279)

Payment of surplus to Tri-Clover Canada Ltd., from the Retirement Plan for Treasury Employees of Tri-Clover Canada Ltd., PN 0271668 (C-3279), in the amount of \$939,145 as at July 31, 1994, plus investment earnings thereon to the date of payment and less any additional expenses incurred.

This decision is rendered in light of the fact that although there is a single PCO plan registration number, the plan has two components, Retirement Plan for Treasury Employees (Part A) and Retirement Plan for Non-Treasury Employees (Part B) and that these were essentially two separate plans. The Commission was satisfied that the two plan components have always had separate accounts and, although there was no formal notification to the Non-Treasury Employees (Part B), alternative newspaper notice was given.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

b) Pension Plan for Certain Hourly Employees of Ault Foods Limited, PN 0308353 (C-55450)

Given the evidence that there would be no continuing employer sponsored pension plan, payment of surplus to Ault Foods Limited, from the Pension Plan for Certain Hourly Employees of Ault Foods Limited, PN 0308353 (C-55450), in the amount of \$3,677,193.75 as at January 1, 1995, plus investment earnings thereon to the date of payment.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

c) Pension Plan for Employees of Heidt Products Inc., PN 0555813 (C-11372)

Payment of surplus to Heidt Products Inc., from the Pension Plan for Employees, PN 0555813 (C-11372), in the amount of \$314,364 as at August 1, 1993, less expenses and adjusted to reflect investment earnings thereon to the date of payment.

Applications under clause 8(1)(b) of the Regulations and subsection 78(1) of the PBA and Surplus Withdrawal Matters - Partial Wind-Up

At the Commission meeting held April 27, 1995, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) Amalgamated Pension Plan for Salaried Employees of Greening Donald Co. Ltd. PN 0338111 (C-8078)

Payment of surplus to Greening Donald Co. Ltd., from the Amalgamated Pension Plan for Salaried Employees of Greening Donald Co. Ltd., PN 0338111 (C-8078), in the amount of \$2,371,200 as at May 31, 1994 plus investment earnings thereon to the date of payment.

This consent shall not be effective until the administrator satisfies the Commission that all

benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

b) Amalgamated Pension Plan for Salaried Employees of Greening Donald Co. Ltd., PN 0338111 (C-8078)

Payment of surplus to Greening Donald Co. Ltd., from the Amalgamated Pension Plan for Salaried Employees of Greening Donald Co. Ltd., PN 0338111 (C-8078), in the amount of \$746,400 as at May 31, 1994 plus investment earnings thereon to the date of payment.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons who are entitled have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

Applications under section 8 of the Regulations, and subsection 78(1) of the PBA - Request for Consent of the Commission to Surplus Withdrawal on Plan Wind Up to be filed in Court

At the Commission meeting held February 23, 1995, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

a) Retirement Plan for Employees of Richards Delivery Service Limited, (C-8888)

Refund of surplus to Hendrie Nationalease Logistic Systems Inc. out of the Retirement Plan for Employees of Richards Delivery Service Limited, Registration Number C-8888, in the amount of \$540,883 as at October 31, 1994, plus investment earnings thereon to the date of payment.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulation once the consent is effective.

b) Crowntek Inc. Canadian Pension Plan, PN 0368811 (C-12886)

Refund of surplus to Crownx Inc. out of the Crowntek Inc. Pension Plan, PN 0368811 (C-12886), in the amount of \$1,847,990 as at December 31, 1987, plus investment earnings thereon to the date of payment.

This consent shall not be effective until the administrator satisfies the Commission that all benefits, benefit enhancements, and any other payments to which members, former members and any other persons are entitled on the termination of the pension plan, have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulation once the consent is effective.

c) TRW Canada Limited Data Systems Division Retirement Plan for Salaried Employees, (C-100910)

Refund of surplus to TRW Canada Limited out of the TRW Canada Limited Data Systems Division Retirement Plan for Salaried Employees, Registration Number C-100910, in the amount of \$1,403,972 as at May 1, 1986 plus investment earnings thereon to the date of payment (estimated to be \$2,466,431.72 as at September 30, 1994).

The Commission will file its consent with the Court pursuant to subsection 8(2) of the Regulation once the consent is effective.

Applications under section 8 of the Regulations, and subsection 78(1) of the PBA - Partial Plan Wind Up and Request for Consent of the Commission to Surplus Withdrawal on Plan Wind Up to be filed in Court

At the Commission meeting held March 30, 1995, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of Regulation 909, as amended, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

The Retirement Plan for the Non-Union Staff Employees of Commonwealth Hospitality Ltd., PN 0560870 (C-11547)

Denied Commission consent to a refund of surplus out of The Retirement Plan for the Non-Union Staff Employees of Commonwealth Hospitality Ltd., PN 0560870 (C-11547), in the amount of \$94,100 as at December 31, 1993, plus investment earnings thereon to the date of payment for the following reasons:

The notice requirements of clause 78(2)(a) of the Act were not satisfied. Clause 78(2)(a) of the Act requires that notice of the application must be issued to "...each member and former member of the pension plan to which the pension fund relates". The Commission's interpretation of this provision with respect to partial wind ups is that all persons who are members and former members of the plan, even if not directly affected by the partial wind up, are entitled to receive the notice of the application. See also the Commission's administrative practice for Surplus Applications (S900-501: paragraph 3, page 16).

Notice of this application was transmitted only to the members and former members employed in the London office and whose employment was terminated as a result of the closure of that office (i.e. included in the partial wind up group). The other members and former members of the plan were not provided with notice of this application and the applicant did not request the Superintendent's authorization for an alternative method of service.

Since the applicant failed to meet the requirements of subsection 78(2)(a) of the Act the application for consent to payment of surplus is denied.

Applications Approved under subsection 78(4) of the PBA - Return of Overpayment

At the Commission meeting held February 23, 1995, the Commission consented pursuant to subsection 78(4) of the PBA to the refund of overpayments as follows:

The City of Etobicoke Pension Plan, (C-6234)

Refund of employer overpayment of contributions made in 1992 in the amount of \$200,000 plus investment earnings thereon to the date of payment to The City of Etobicoke from The City of Etobicoke Pension Plan, Registration Number C-6234.

At the Commission meeting held March 30, 1995, the Commission consented pursuant to subsection 78(4) of the PBA to the refund of overpayments as follows:

The Nesbitt Thomson Corporation Limited Retirement Annuity Plan, PN 0283234 (C-4357)

Refund of employer overpayment of contributions made in 1994 in the amount of \$505,556.41 to Nesbitt Burns Inc. from The Nesbitt Thomson Corporation Limited Retirement Annuity Plan, PN 0283234 (C-4357).

Applications approved under section 105 and subsection 78(4) of the PBA - Extension of Time and Return of Overpayment

At the Commission meeting held March 30, 1995, the Commission consented pursuant to section 105 of the PBA to an extension of time for filing an application and pursuant to subsection 78(4) of the PBA to the refund of overpayments as follows:

Pension Plan for Designated Employees of Abbott of England (1981) Ltd.

Extend the time limit for filing an application for the refund of overpayments from the plan's 1988-89 fiscal year end to its 1993-94 fiscal year end;

Refund of employer overpayment made in December 1988 in the amount of \$189,500 to Abbott of England (1981) Ltd. from the Pension Plan for Designated Employees of Abbott of England, Registration Number C-15883.

Pension Benefits Guarantee Fund ("PBGF")

On February 23, 1995, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

Pension Plan for Supervisory and Staff Personnel of Hiawathaland Hotels Limited, (C-14720)

Allocate and pay the amount of \$641 plus interest at the rate of 9% from March 31, 1995 to the date of payment, from the Pension Benefits Guarantee Fund to the Pension Plan for Supervisory and Staff Personnel of Hiawathaland Hotels Limited, C-14720. This amount is additional to the previously approved allocation dated September 16, 1993 from the Guarantee Fund amounting to \$14,514 with interest at the rate of 9% from March 31, 1993 to the date of payment.

On February 23, 1995, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

Pension Plan for Key Executive of Atwell Fleming/Young Ltd., PN 0412700 (C-16673)

On March 30, 1995, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

The Pension Plan of Union Drawn Steel Company Limited, (C-5905)

Allocate and pay to The Pension Plan of Union Drawn Steel Company Limited, C-5905:

- a) an additional payment not to exceed \$14,000 in respect of pension entitlements of the new pensioner for the period from July 1, 1993 to February 28, 1995; and
- b) an additional \$700 each month for pensions, effective March 1, 1995 (total monthly payments for pensions not to exceed \$6,900).

On March 30, 1995, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

Retirement Income Plan for Salaried Employees of Savage Shoes Limited and Associated Companies, PN 0440420 (C-18831)

INDEX NO.:

XDEC-28

PLAN:

Imperial Oil Limited Retirement Plan (1988), PN 0347054 (C-8884), and Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., PN 0344002 (C-4280)

DATE OF DECISION:

April 28, 1995

PUBLISHED BBS:

May 16, 1995

PUBLISHED BULLETIN:

Bulletin 6/2 (Summer 1995)

Decision of the Pension Commission of Ontario

Reasons for the Decision - The Preliminary Issue

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8 (hereinafter referred to as the "Act");

Nature of the Application

AND IN THE MATTER OF the Decisions of the Superintendent of Pensions dated May 7, 1993 and June 29, 1994 in respect of the Imperial Oil Limited Retirement Plan (1988), Registration Number C-8884, and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number C-4280;

The Superintendent of Pensions for Ontario (the "Superintendent") registered amendments to the Imperial Oil Limited Retirement Plan (1988) (the "IOL Plan") and the Pension Plan for Former Employees of McColl-Frontenac Inc. (the "MFI Plan") (collectively, the "Plans"). A group of employees objected to the registration of the amendments and sought a hearing before the Pension Commission of Ontario (the "Commission").

AND IN THE MATTER OF a request for a Hearing before the Pension Commission of Ontario;

Between: **Certain members and former members of the plans represented by Koskie & Minsky ("the Entitlement 55 Group")**

A preliminary question arose as to whether the Commission had jurisdiction to conduct the hearing. The Commission received written submissions on the matter, heard oral argument and advised the parties, by way of letter dated March 10, 1995, that it had determined that it had jurisdiction and written reasons would follow. These are the promised reasons.

- and -

The Superintendent of Pensions

The Facts

- and -

Imperial Oil Limited

In September of 1991, Imperial Oil Limited ("Imperial Oil") filed with the Superintendent proposed amendments to section 4.3 of the Plans, which were to be effective as of August 1, 1991 (the "Amendments").

Before: Eileen E. Gillese, Chair; Darcie Beggs, member; Joyce Stephenson, member

Appearances: For the applicant:
Mr. Mark Zigler, Mr. Kevin MacNeil

Section 4.3 of the Plans, after the Amendments, reads as follows:

For the Superintendent:
Mr. Shaun Devlin, Ms. Peggy McCallum

For Imperial Oil:
Mr. J. Brett Ledger, Mr. Ian J. McSweeney

A Member with ten (10) or more years of Service whose employment is terminated by the Company and who is eligible for a termination annuity under Section 4.1. **and who will be eligible to retire under Section 2.2 within five (5) years of the date of terminating employment**, may retire under

Hearing Date: March 2, 1995 at Toronto, Ontario

Decision Released: April 28, 1995

Section 2.2(a) and receive a pension calculated under Section 3A.2 in lieu of a termination annuity under Section 4.1 if the Member's employment is terminated for reasons deemed by the Company to be for maintaining or improving the efficiency of its operations; provided, however, that the date of retirement for the purpose of receiving payment of such pension shall not be effective until the last day of the month in which the Member attains age 55 and further provided that the estimate of the Member's Canada/Quebec Pension Plan retirement benefit and the amount of pension currently being paid under the Old Age Security Act as referred to in Sections 3A.1 (a) and (b) shall be as of the month of such Member's termination. (emphasis added)

The Amendments resulted in the addition of the words in bold to section 4.3 of the Plans.

In a letter dated October 28, 1992, to the Superintendent, counsel for a group of former Imperial Oil employees (the "Entitlement 55 Group") submitted that prior to the Amendments, a plan member who had ten or more years of service and whose employment was terminated "for reasons deemed by the company to be for maintaining or improving the efficiency of its operations" would be entitled to a full unreduced pension upon attaining age 55, based on the member's service. The effect of the Amendments, it was alleged, was to deny employees benefits previously available under section 4.3 unless the employee would have been able to retire within five years of termination. The Entitlement 55 Group went on to suggest that the Amendments were void pursuant to section 14 of the Act and asked the Superintendent to "issue the necessary orders under Section 87 of the Act" so that "Article 4.3 is complied with in accordance with its provisions prior to the" Amendments.

In a March 25, 1993 letter to the Superintendent, counsel for the Entitlement 55 Group submitted that if the Superintendent concluded that the Amendments violated sections 14 or 22 of the Act, the Superintendent had the jurisdiction under subsection 89(1) of the Act to propose to refuse to register the Amendment. Counsel for the Entitlement 55 Group further submitted that if the Superintendent

concluded that the Amendments violated the provisions of the Plans themselves, the Superintendent had jurisdiction under subsection 89(2) of the Act to propose to make an order under clause 87(2)(a).

By letter dated May 7, 1993, the Superintendent stated his conclusion that the Amendments were not void pursuant to section 14 of the Act. Consequently the Superintendent did not refuse to register the Amendment pursuant to clause 18(1)(d) of the Act.

However, the Superintendent indicated that the Amendments were adverse amendments of the type contemplated in subsection 26(1) of the Act. The Superintendent therefore required that Imperial Oil comply with the requirements of subsection 26(1) of the Act by transmitting notices of the Amendments to affected members of the Plans.

Imperial Oil followed the procedure set out in section 26 of the Act; the Superintendent received many letters and submissions from members and former members of the Plans in addition to submissions from the Entitlement 55 Group and Imperial Oil.

By letter dated June 29, 1994 to counsel for the Entitlement 55 Group, the Superintendent stated he could not conclude that the Amendments were void or that the Plans, with the Amendments, would cease to comply with the Act and regulations. The Superintendent stated that there were thus no grounds to refuse to register the Amendments under clause 18(1)(d) of the Act. The Superintendent therefore declined to issue a Notice of Proposal under subsection 89(1) of the Act.

In his June 29, 1994 letter, the Superintendent also indicated that the Amendments appeared to have been made in accordance with the terms of the Plans. The Superintendent therefore declined to make an order under section 87 of the Act and indicated that registration of the Amendments would be considered in the normal course. The Amendments were registered on July 13, 1994.

The Entitlement 55 Group sought a hearing before the Commission. At a pre-hearing conference, the parties agreed to argue the issue of jurisdiction in advance of a hearing on the merits.

The Issue

The preliminary issue for determination at this time is this:

Does the Commission have the authority to hold a hearing, pursuant to subsection 87(1) or 89(2), in relation to the Amendments and the Superintendent's decision to register them?

The Arguments

Both Imperial Oil and the Superintendent argue that the Commission is without jurisdiction to hold a hearing in which the central issue is the validity of the Amendments. Their arguments are essentially two fold.

The first can be termed the "complete code" argument. The foundation of this argument is that the Act created a complete code for dealing with proposed amendments to plans and, under the code, it is the Superintendent who has the power to determine how and when to register amendments. When an amendment is presented for registration, the Superintendent may register the amendment, refuse to register the amendment on the grounds set out in paragraph 18(1)(d) of the Act or require the administrator to follow the procedures set out in section 26. If section 26 procedures are followed, the Superintendent may register or refuse to register the amendments, again on the grounds set out in paragraph 18(1)(d). Whereas subsection 18(2) confers an express right to a hearing in relation to a decision by the Superintendent to refuse to register an amendment, there is no corresponding right when he decides to register an amendment. Thus, so the argument runs, if plan members wish to challenge the Superintendent's decision to register an amendment, their remedy lies with the courts and they do not have recourse to the Commission. On this line of argument, to allow recourse to the Commission would do violence to a plain reading of the Act and it would distort the operation of the Act which gives authority to the Superintendent to register amendments without supervision by the Commission.

The second argument runs along these lines. It is said that, due to the complete code, the Superintendent was without authority to issue a subsection 87(1) order. The mere fact that plan members asked him to act under section 87 and he refused, it is argued, could not automatically entitle them to a hearing. If it were otherwise, plan members would gain entitlement to

hearings before the Commission simply by asking the Superintendent to issue an order under section 87, regardless of whether the Superintendent could act under that section. As he declined to act under either subsections 89(1) or (2) of the Act, there was no right to a hearing before the Commission under either section 87 or 89.

The Relevant Legislation

Frequent reference is made to the provisions in clauses 18(1)(d) and (e) and subsections 18(2), 87(1), (2), 89(1) and (2). For ease of reference, those provisions will be set out now.

(From the Act.)

18.- (1) The Superintendent may, ...

(d) refuse to register an amendment to a pension plan if the amendment is void or if the pension plan with the amendment would cease to comply with this Act and the regulations;

(e) revoke the registration of an amendment that does not comply with this Act and the regulations.

(2) The authority of the Superintendent under subsection (1) is subject to the right to a hearing under section 89.

87.- (1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 89 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund.

(2) The Superintendent may make an order under this section if the Superintendent is of the opinion, upon reasonable and probable grounds,

(a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;

(b) that the pension plan does not comply with this Act and the regulations; or

(c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations.

- 89.- (1) Where the Superintendent proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant or administrator of the plan.
- (2) Where the Superintendent proposes to make an order under,
- (a) subsection 42 (9) (repayment of money transferred out of pension fund);
 - (b) subsection 43 (5) (repayment of money paid to purchase pension, deferred pension or ancillary benefit);
 - (c) subsection 80 (6) (transfer of assets to pension fund of successor employer);
 - (d) subsection 81 (6) (transfer of assets to new pension fund); or
 - (e) section 87 (administration of pension plan in contravention of Act or regulation),

the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and on any other person to whom the Superintendent proposes to direct the order.

Reasoning and Result

The Entitlement 55 Group alleges that in passing the Amendments, Imperial Oil breached either the terms of the Plans or the provisions of the Act or both. The Superintendent concluded that the Amendments breached neither. Do the Plan members have the right to a hearing before the Commission to contest those conclusions or is their only recourse to the courts through judicial review? (There is no right of appeal to the courts from Superintendent decisions.)

Before turning to specific provisions in the legislation, it is appropriate to bear in mind the scheme of the legislation and the role of the Commission. Section 96 of the Act places ultimate responsibility with the Commission to administer the Act and regulations. The Superintendent is appointed by the Commission and is obliged to "exercise the powers and perform the duties that are vested in or imposed on the Superintendent by this Act, the regulations and the Commission" (subsection 94(4)).

The courts considered the role of the Commission in Collins v. Pension Commission of Ontario (1986), 56 O.R. (2d) 275 (Divisional Court). While the case was about surplus withdrawal under pre-reform legislation, there is little doubt that its comments were intended to be of general application. The flavour of the courts exhortations, we believe, should be kept in mind when considering the legislation. The Commission was called a fiduciary and, at p. 286 of the case, it was said, "It is difficult to imagine why the commission was established without accepting that its principal function was to protect the interests of plan members."

Those are the contextual considerations which we brought to bear in considering whether the Commission had jurisdiction in this matter. However, we are mindful of the legal principle that the Commission is a creature of statute with only the powers bestowed upon it by the legislature. Thus, we turn now to the specific legislative provisions in question.

We find the decision of this Commission in C.U.P.E. v. O.H.A. (1990) 1:4 PCO Bulletin 1/4, p. 12 ; aff'd (1992), 91 D.L.R. (4th) 436 (Ont. Div. Ct.) ("CUPE v. OHA") a useful starting point. In CUPE v. OHA, members of the Hospitals of Ontario Pension Plan objected to an adverse plan amendment, claiming it did not conform to the requirements of clause 8(1)(e) of the Act. The Superintendent refused to issue a section 87 order and the Commission held that it had jurisdiction to review the Superintendent's decision. While the sections of the Act challenged by plan members are different here than in CUPE v. OHA, it is essentially on all fours. In the case before us, plan members have objected to adverse plan amendments and the Superintendent has refused to issue a section 87 order.

The argument was made that "the Superintendent did not refuse to make any order under section 87 of the PBA that the Superintendent had the power to make" and therefore the case was distinguishable from CUPE v. OHA. We do not accept that the Superintendent could not have acted under section 87. Clause 87(2)(a) specifically empowers the Superintendent to make an order under section 87 if he is of the opinion, on reasonable and probable grounds, that the pension plans are not being administered in accordance with the Act, regulations or the terms of the Plan itself. Had the Superintendent been of the view that the Amendments were void by reason of being contrary

to the Act or the plans themselves, we are of the view that he had the power to issue a section 87 order. We do not accept that his only recourse would have been under sections 18 or 89. The Superintendent could have elected to proceed under section 18 or 89 but there is nothing in the Act which expressly bars him from taking action under section 87 and we would not want to hamper him from taking such action as he deems necessary and appropriate in the circumstances, including a consideration of the use of section 87. For example, what would happen if a plan amendment were inadvertently registered? The Superintendent could not use clause 18(1)(d) as a remedy, as it contemplates refusal before registration. The Superintendent could, pursuant to subsection 89(1), issue a notice of proposal to revoke registration but he might deem it necessary to order the administrator to refrain from administering the plan according to the amendment pending finalization of the proposal to revoke registration. To do that, he would have to have recourse to the powers bestowed upon him by section 87.

In short, we reject the "complete code" argument and the contention that the Superintendent did not have the power to issue a section 87 order. The fact that subsection 18(2) explicitly contemplates a hearing where the Superintendent contemplates refusing to register an amendment does not exclude the operation of section 87 from regulating situations like this where the Superintendent proposes to act on a contested matter.

It is important to note that the Entitlement 55 Group made an argument of substance when seeking the section 87 order. It was not merely disgruntled about an adverse amendment. It complained of breaches of the Act or the terms of the plans themselves. Thus, we do not accept that the Entitlement 55 Group asked for a section 87 order simply as a means of obtaining a hearing before the Commission. That is, a mere request for a section 87 order and consequent refusal by the Superintendent is not enough to entitle anyone to a hearing before the Commission. There must be substance to the section 87 request, as there was in this case.

In CUPE v. OHA, the Commission concluded that where the Superintendent is requested to make an order under section 87 and refuses, the members have a right to a hearing in respect of that refusal. The Commission held that subsection 87(1) gave it jurisdiction to hold a hearing because the Superintendent had, in effect, proposed to make an order refusing to act under section 87. The phrase in subsection 89(2) "proposes to make an order" was seen to include a proposal to refuse to make an order. Divisional Court agreed, stating that "there is ample authority to support the proposition that a dismissal of an application can constitute an order."

The Commission recognises, of course, that it is not bound by past decisions. However, we find that its reasoning in CUPE v. OHA and that of Divisional Court in its review of the decision is sound and we adopt it. It serves little purpose to reiterate those judgments but we would note that the considerations of procedural fairness which the Commission expressed in that case exist in the case before us. As in CUPE v. OHA, had the Superintendent decided to act in a manner adverse to Imperial Oil, Imperial Oil would have had an automatic right to contest the Superintendent's decision pursuant to subsection 89(8). And, as in CUPE v. OHA, if the Commission has no jurisdiction to hear the plan members, their only legal recourse would be to the courts by way of judicial review with its high threshold test of patent unreasonableness.

Having found that the Commission has jurisdiction under section 87 of the Act, there is no need to consider whether it has jurisdiction under subsection 89(2).

Conclusion

For these reasons, the hearing panel found that the Commission has jurisdiction to hear the application.

Dated this 28th day of April, 1995 at the City of Toronto, Province of Ontario.

Eileen E. Gillese, Chair; Darcie Beggs, member; Joyce Stephenson, member

INDEX NO.:	XDEC-29
PLAN:	Pension Plan of Corewall Inc. for W. Don Paton, PN 0690925 (C-103167)
DATE OF DECISION:	May 17, 1995
PUBLISHED BBS:	July 7, 1995
PUBLISHED BULLETIN:	Bulletin 6/2 (Summer 1995)

Decision of the Pension Commission of Ontario	Reasons for the Decision
<p>IN THE MATTER OF the <i>Pension Benefits Act</i>, R.S.O. 1990, c. P.8 (the "Act");</p> <p>AND IN THE MATTER OF a proposal dated December 8, 1994 of the Superintendent of Pensions for Ontario pursuant to section 87 of the Act in respect of the Pension Plan of Corewall Inc. for W. Don Paton, PN 0690925 (C-103167) (the "Plan");</p> <p>AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;</p> <p>Between: Corewall Inc.</p> <p> - and -</p> <p> Superintendent of Pensions</p> <p>Before: Eileen E. Gillese, Chair Monica Townson, Vice Chair Kit Moore, Member</p> <p>Appearances: For the applicant: Robert Talbot</p> <p> For the Superintendent: Shaun Devlin, Catherine Vibien</p> <p>Hearing Date: May 4, 1995 at Toronto, Ontario</p> <p>Decision Released: May 17, 1995</p>	<p>Nature of the Application</p> <p>On December 8, 1994, the Superintendent of Pensions for the Province of Ontario ("the Superintendent") issued a Notice of Proposal to make an Order requiring Corewall Inc. ("Corewall") and Trac Industries Inc. ("Trac Industries") to immediately pay certain monies into the Plan.</p> <p>Corewall requested a hearing in the matter, pursuant to subsection 89(8) of the Act, before the Pension Commission of Ontario ("the Commission").</p> <p>A pre-hearing conference was held on March 9, 1995, in which Corewall, through the person of Robert Talbot, participated. A pre-hearing conference order dated April 6, 1995, ("the Order") confirmed the matters discussed in the pre-hearing conference and set out the issue for determination at the hearing and guidelines for the conduct of the hearing, including the timing of submissions by parties. In the Order, Corewall was to have made submissions by April 7, 1995. No such submissions were made. In the absence of submissions by Corewall, the Commission decided the matter solely on the basis of the submissions and documents filed by the Superintendent.</p> <p>The Issue</p> <p>As stated in the order, the sole issue to be resolved in this matter is:</p> <p>What amount, if any, is owing by Corewall to the Plan fund in light of the wind up report filed with the Superintendent in April 1994?</p>

The Facts

The facts are set out in the submissions of the Superintendent. They are uncontested and we have relied upon them. The following borrows heavily from those submissions.

On January 1, 1989, Corewall established the Plan to provide defined benefits to Mr. W. Don Paton. Mr. Paton was the sole member of the Plan. After January 1, 1989, Mr. Paton received remuneration from both Corewall and Trac Industries.

On September 4, 1992, because Corewall had terminated Mr. Paton's employment and because Mr. Paton was the sole member of the Plan, Corewall was advised by its actuaries to wind up the Plan and of the manner in which the wind up was to be conducted.

From October of 1992 to March of 1994, Corewall was advised on numerous occasions by staff of the Commission, that it was required to wind up the Plan, draft an option statement for Mr. Paton, and remit any outstanding contributions owing to the Plan.

On March 28, 1994, Corewall filed with the Commission, a wind up report for the Plan with an effective wind up date of October 31, 1993.

On April 6, 1994, Corewall's actuaries were advised by Commission staff that the wind up report filed on March 28, 1994 would not be approved by the Superintendent because, inter alia, it did not provide full indexation of benefits in accordance with the plan provisions, and it did not address the issue of outstanding contributions owing to the Plan.

On April 15, 1994, Corewall filed with the Commission, a revised wind up report ("the Revised Wind up Report") for the Plan with an effective wind up date of December 31, 1991.

The Revised Wind up Report states that as at December 31, 1991, a deficit of \$22,653 existed in the pension fund for the Plan (the "Fund"); \$10,932 of this amount was outstanding contributions owing to the Plan and \$11,721 represented the additional payment necessary to fully fund Mr. Paton's benefit.

On April 18, 1994, Mr. Paton's actuary advised a staff member of the Commission that the Revised Wind up Report understated Mr. Paton's pension benefit

due to a misapplication of Revenue Canada's maximum benefit rules.

On May 25, 1994, pursuant to subsection 70(3) of the Act, the Superintendent approved the purchase of an annuity or the transfer of the commuted value of Mr. Paton's benefit as calculated in the Revised Wind up Report and in accordance with the option chosen by Mr. Paton. The Superintendent did not approve the Revised Wind up Report due to the outstanding issue concerning the application of Revenue Canada's maximum benefit rules.

On July 11, 1994, Mr. Paton requested that the commuted value of his pension benefit be transferred to a locked-in Registered Retirement Savings Plan.

On August 11, 1994, Corewall was advised by Commission staff that the deficit amount, as calculated in the Revised Wind up Report with the appropriate interest adjustments, should be transferred to the Fund for the benefit of Mr. Paton.

On August 24, 1994, Corewall was advised by its actuaries regarding the amount of the deficit in the Fund which Corewall was required to pay, as follows:

"The original liability (commuted value) at December 31, 1991 was calculated to be \$154,188. Assuming the money is actually transferred by Mutual on Monday, August 29, 1994, the updated value (at 9.5% interest) would be \$196,308. The approximate value of the fund right now is \$163,998. If a "cushion" of \$1000 is left in the fund, that means you should deposit \$196,308 plus \$1,000 minus \$163,998 or \$33,310."

On a number of occasions during the period of September through to early November 1994, Corewall was advised by its actuaries, the Superintendent and Commission staff that payment to the Fund of the deficit amount, as calculated in the Revised Wind up Report with the appropriate interest adjustments, was required. Corewall generally acknowledged during this period that this deficit amount was owing to the Fund and would be paid.

On November 8, 1994, Corewall transferred to the Fund \$22,655.41 of the deficit amount owing. On November 9, 1994, Corewall was advised by its actuaries that approximately \$10,045 was still owing to the Fund as at November 10, 1994.

On November 18, 1994, and December 2, 1994, representatives of Corewall verbally advised Commission staff that the outstanding balance of the deficit amount owing, as calculated in the Revised Wind up Report with the appropriate interest adjustments, would be remitted to the Fund.

On December 8, 1994, the Superintendent issued the Notice of Proposal to make an order in which he proposed to order "Corewall and Trac Industries Inc. to immediately comply with the requirements of section 75 of the Act and sections 31 and 32 of Regulation 909, R.R.O. 1990, with regard to the Plan." The reasons given by the Superintendent were as follows:

"I propose to take this action because Corewall Inc. and Trac Industries Inc. have failed to comply with the requirements of section 75 of the Act and sections 31 and 32 of the Regulation with regard to the Plan, including the failure by Corewall Inc. and Trac Industries to pay into the pension fund related to the Plan the full monetary amount identified in the wind up report submitted to the Superintendent of Pensions by Corewall Inc. dated April, 1994 and for which payment approval was given under subsection 70(3) of the Act by the Superintendent of Pensions on or about May 25, 1994."

On January 12, 1995, Corewall requested a hearing in this matter pursuant to the Superintendent's Proposal.

On February 1, 1995, Revenue Canada advised Corewall that it was in agreement with the actuarial values and assumptions used in the Revised April Report.

On March 10, 1995, Mr. Paton advised Commission staff that he was withdrawing his objection to the approval of the Revised Wind up Report.

On April 21, 1995, the trustee of the Fund, The Mutual Life Assurance Company of Canada, advised Commission staff that all the monies in the Fund had been transferred to Mr. Paton's locked-in Registered Retirement Savings Plan: \$166,528.79 was transferred on October 25, 1994 and \$22,733.74 was transferred on December 5, 1994.

It was agreed by Corewall at the pre-hearing conference of March 9, 1995, and confirmed in the pre-hearing conference Order dated April 6, 1995, that the sole issue in this hearing is as follows:

What amount, if any, is owing by Corewall to the Fund in light of the wind up report filed with the Superintendent in April 1994?

The Relevant Legislation

(From the Act,)

- 70.- (1) The administrator of a pension plan that is to be wound up in whole or in part shall file a wind up report that sets out,
- (a) the assets and liabilities of the pension plan;
 - (b) the benefits to be provided under the pension plan to members, former members and other persons;
 - (c) the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits; and
 - (d) such other information as is prescribed.
- (2) No payment shall be made out of the pension fund in respect of which notice of proposal to wind up has been given until the Superintendent has approved the wind up report.
- (3) Subsection (2) does not apply to prevent continuation of payment of a pension or any other benefit the payment of which commenced before the giving of the notice of proposal to wind up the pension plan or to prevent any other payment that is prescribed or that is approved by the Superintendent.
- 75.- (1) Where a pension plan is wound up in whole or in part, the employer shall pay into the pension fund,
- (a) an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund; and
 - (b) an amount equal to the amount by which,

- (i) the value of the pension benefits under the pension plan that would be guaranteed by the Guarantee Fund under this Act and the regulations if the Commission declares that the Guarantee Fund applies to the pension plan,
- (ii) the value of the pension benefits accrued with respect to employment in Ontario vested under the pension plan, and
- (iii) the value of benefits accrued with respect to employment in Ontario resulting from the application of subsection 39 (3) (50 per cent rule) and section 74,

exceed the value of the assets of the pension fund allocated as prescribed for payment of pension benefits accrued with respect to employment in Ontario.

- (2) The employer shall pay the money due under subsection (1) in the prescribed manner and at the prescribed times. 1987, c. 35, s. 76.

(From the Regulations,)

- 31.- (1) The liability to be funded under section 75 of the Act shall be funded by annual special payments commencing at the effective date of the wind up and made by the employer to the pension fund.
- (2) The special payments under subsection (1) for each year shall be at least equal to the greater of,
 - (a) the amount required in the year to fund the employer's liabilities under section 75 of the Act in equal payments, payable annually in advance, over not more than five years; and
 - (b) the minimum special payments required for the year in which the plan is wound up, as determined in the reports filed or submitted under sections 3, 4, 5.3, 13 and 14, multiplied by the ratio of the basic Ontario liabilities of the plan to the total of the liabilities and increased liabilities of the plan as determined under clauses 30 (2) (b) and (c).
- (3) The special payments referred to in subsections (1) and (2) shall continue until the liability is funded.
- (4) Subsection (5) applies to a qualifying plan or to a plan with the following history:

- 1. An election was made in respect of the plan under subsection 5.1 (1) or (2).
- 2. The election was rescinded in accordance with subsection 5.1 (12).
- 3. After the date of the election but within five years after the date on which the election was rescinded, the plan was wound up.

- (5) For a qualifying plan or a plan with the history described in subsection (4), the liability to be funded under section 75 of the Act shall be funded by monthly special payments by the employer to the pension fund over a period of not more than one year beginning on the effective date of the wind up. O. Reg. 712/92, s. 19.

- 32.- (1) Until the employer's liability under section 75 of the Act is funded, the administrator of the plan shall annually cause the plan to be reviewed and a report to be prepared by a person authorized by section 15 and shall file the report within six months after the valuation date of the report. R.R.O. 1990, Reg. 909, s. 32 (1); O. Reg. 712/92, s. 20 (1).

- (2) A report required under subsection (1) shall show,

- (a) the gain or the loss in the pension plan since the valuation date of the immediately preceding report as a result of differences between the actual experience and the experience anticipated by the assumptions made in the previous report; and

- (b) the increase or decrease in the remaining special payments that will liquidate the gain or loss referred to in clause (a) over the remainder of the five-year period commencing from the effective date of the wind up. R.R.O. 1990, Reg. 909, s. 32 (2); O. Reg. 712/92, s. 20 (2).

- (3) Any special payments required as a result of a loss referred to in clause (2) (a) shall be included as payments required to be made by the employer under section 75 of the Act.

- (4) Where a report made under this section shows that there is no further amount to be funded, any surplus may revert to the employer, subject to the requirements of section 79 of the Act. R.R.O. 1990, Reg. 909, s. 32 (3, 4).

Reasoning

The Commission accepts the evidence of the Plan actuaries in a letter of November 9, 1994, to Mr. Robert Talbot, President, Trac Industries which stipulates that the amount outstanding as at November 10, 1994, is \$10,045.

No actuarial evidence to the contrary was submitted. We would specifically note that the allegations contained in Mr. Talbot's pre-hearing brief of March 9, 1995, were made for the first time in that brief. The substance of the allegations had not been raised in any of the numerous prior communications between Commission staff and Mr. Talbot leading up to the pre-hearing conference. The allegations were not supported by actuarial or other evidence and cannot be considered evidence. Furthermore, Mr. Talbot did not make written submissions to the hearing supporting his allegations. We cannot therefore accept these allegations as drawing into dispute the validity of the reports and information filed on behalf of the Plan by its actuaries.

This order shall go against Trac Industries, as well, as Trac Industries had Notice of the Proposal to make an Order, made no request for a hearing and made no attempt to participate in any of the proceedings initiated by Corewall.

Order

For these reasons, the Commission directs the Superintendent to order Corewall and Trac Industries to forthwith pay into the Fund the amount of \$10,045, plus interest calculated at a rate of 9.5% per annum from November 10, 1994 until the date of payment into the Fund.

The Commission views the failure to remit contributions to a pension plan as a most serious matter. As a consequence, the Superintendent is directed to consider prosecuting Corewall and Trac Industries pursuant to sections 109(1) and/or (2) of the Act should they fail to comply with the terms of this order in a timely fashion.

It appears that the Superintendent gave considerable latitude to Corewall and Trac Industries to remit the outstanding contributions. While we accept that the Superintendent should attempt to obtain compliance without instituting formal proceedings, we suggest that the Superintendent may wish to consider how much latitude is justified in matters involving non remittance of contributions.

Dated this 17th day of May 1995 at the City of Toronto, Province of Ontario.

Eileen E. Gillese, Chair; Monica Townson, Vice Chair;
Kit Moore, Member

Contacts for PCO Enquiries

Actuarial Services		314-0559
Annual Information Return Filing Fee	George Ha	314-0676
Communications - Publications and BBS	Judith Chalmers	314-0699
Issues & Correspondence, also FOIPOP Requests* & Media Enquiries	Debra Bain	314-0605
General Enquiries		314-5993
Mailing List Update	Linda Stangl	314-0694
PBGF Assessment	George Ha	314-0676
Policy Issues	Susan Ellis Cynthia James Jules Huot (Bilingual)	314-0703 314-0702 314-0613
Registrar to the Commission	Sharon Carr (Acting Registrar)	314-0624

* Written FOIPOP requests should be sent to Ron Ward, Assistant Co-ordinator, Information and Privacy Office, Ministry of Finance, 4th floor, 1075 Bay Street, Toronto ON M5S 2B1 (416) 325-8369 or fax: (416) 325-8252.

Contacts for Plan-related Enquiries

1. Sector Allocations - (At least one plan with 250 or more members)

Sectors	Pension Officer		Alternate	
Agriculture, Mining Construction, Finance	Rosemine Jiwa-Jutha	314-0611	Mark Eagles	314-0599
Trade, Commercial, Public Administration	Mark Eagles	314-0599	Rosemine Jiwa-Jutha	314-0611
Food, Beverages, Textiles, Paper	Jaan Pringi	314-0586	Penny McIlraith	314-0594
Rubber, Plastics, Transportation Equipment	Larry Martello	314-0587	Elizabeth Addo	314-0607
Printing, Primary Metals, Machinery	Alain Malaket (bilingual)	314-0609	John Graham	314-0647
Electrical, Non-Metallic, Chemicals	John Graham	314-0647	Alain Malaket	314-0609

2. Alpha Allocations - Defined Benefit & Multi-Employer Plans (Plans with less than 250 members)

Alpha Range	Pension Officer		Alternate	
A-BRI	David Allan	314-0612	Elizabeth Carter	314-0604
BRO-COM	Steve Young (bilingual)	314-0646	Mark Henry	314-0584
CON-EZZ	Elizabeth Addo	314-0607	William Qualtrough	314-0641
F-HAZ	Mark Henry	314-0584	Steve Young	314-0646
HEA-KMZ	Lynn Barron	314-0639	Sandy Malloy	314-0636
KNA-MOQ	Elizabeth Carter	314-0604	David Allan	314-0612
MOR-PNZ	Stanley Chan	314-0635	Maureen Barber	314-0645
POL-SHE	Maureen Barber	314-0645	Stanley Chan	314-0635
SHI-TORO	Sandy Malloy	314-0636	William Qualtrough	314-0641
TORR - #*	Lynn Barron	314-0639	Sandy Malloy	314-0636

* Companies with alpha-numeric names.

3. Alpha Allocations - Defined Contribution Plans

Alpha Range	Pension Analyst		Alternate	
A-BAU	Gino Marandola (bilingual)	314-0698	John Staric	314-0596
BAV-CANADA	Marion Gassenauer	314-0690	Merle Corbie	314-0637
CANADI-COK	Margaret Fennell	314-0600	Claude De Souza	314-0608
COL-DIL	Claude De Souza	314-0608	Margaret Fennell	314-0600
DIM-FLO	Amin Purshottam	314-0552	Marion Gassenauer	314-0690
FLU-HAL	Margaret Fennell	314-0600	Claude De Souza	314-0608
HAM-JAL	Merle Corbie	314-0637	Marion Gassenauer	314-0690
JAM-MIL	Debra Bain	314-0640	John Staric	314-0596
MIN-ONT	Claude De Souza	314-0608	Margaret Fennell	314-0600
ONU-RAL	Marion Gassenauer	314-0690	Merle Corbie	314-0637
RAM-SHA	John Staric	314-0596	Debra Bain	314-0640
SHE-THA	Merle Corbie	314-0637	Marion Gassenauer	314-0690
THE-VUL	Marion Gassenauer	314-0690	Merle Corbie	314-0637
VUM - #*	John Staric	314-0596	Debra Bain	314-0640

* Companies with alpha-numeric names.

4. Alpha Allocations - Pension Plans of Insolvent Companies

Alpha Range	Co-ordinator	
A-E, T-#s*	Jai Persaud	314-0595
F-S,	Larry Falconer	314-0610

* Companies with alpha-numeric names.

All PCO prescribed forms are now available in the Supplement to the *PCO Bulletin*, Spring 1995 issue. Copies of the Supplement and past issues* of the *PCO Bulletin* can be obtained by contacting the Ministry of Finance in Oshawa: 1-800-263-7965 (Ontario English enquiries) or 1-800-668-5821 (Ontario French enquiries).

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